

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

COMMIL USA \* Civil Docket No.  
\* 2:07-CV-341  
VS. \* Marshall, Texas  
\*  
\* May 12, 2010  
CISCO SYSTEMS, INC., ET AL \* 8:30 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

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(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

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10 \* \* \* \* \*

11  
12  
13 P R O C E E D I N G S

14 (Jury in.)

15 THE COURT: All right. Please be seated.  
16 Good morning, Ladies and Gentlemen. Thank you for being  
17 here timely.

18 Continue with your examination.

19 MR. WERBNER: Thank you, Your Honor. May  
20 it please the Court.

21 THE COURT: Mr. Werbner.

22 YARON SOFFER, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

23 DIRECT EXAMINATION (CONTINUED)

24 BY MR. WERBNER:

25 Q. Mr. Soffer, at the end of the day, we were

1 talking about your background.

2 THE COURT: Let him go ahead and get in  
3 the stand there.

4 Q. (By Mr. Werbner) Yesterday we were talking  
5 about your background and the origins of the '395  
6 patent, the formation of Commil Limited. I want to pick  
7 up there.

8 Are you with me?

9 A. Yes.

10 Q. I want to just for a moment discuss the very  
11 beginning of Commil Limited. How many employees were  
12 there when it was first formed in 2000?

13 A. When we -- when we actually formed the  
14 company, it only had actually three founders. And after  
15 we raised some money, we began recruiting more  
16 employees.

17 Q. You mentioned raising money. Would you tell  
18 the jury about the funds that the state of Israel  
19 Scientist Department invested in your company?

20 A. Yes. The Israeli government has a special  
21 office called the Chief Scientist, that his goal is to  
22 support innovation and new technologies to help  
23 companies that develop a product but develop also  
24 technologies without necessarily having a right -- a  
25 business plan for the short-term to encourage

1 developments for the long run and for the short run.

2 Q. And did Commil Limited receive a grant from  
3 the state of Israel through their Chief Science  
4 Department?

5 A. Yes, a couple of them.

6 Q. And what were the magnitude of those grants  
7 that that group made to Commil Limited?

8 A. I don't recall the exact numbers, but it's  
9 something between 1.5 to \$2 million.

10 Q. One and a half to \$2 million?

11 A. I think so.

12 Q. Before we move on, just let the jury know, in  
13 Israel where you live and your involvement in the  
14 high-tech area, so that the jury knows, how robust or --  
15 or significant is the high-tech industry in Israel over  
16 the last 10 years?

17 A. It has become very strong. There are many  
18 products that we all use that became -- began in Israel.  
19 It's -- I think it's a mixture of the education, the  
20 state of mind of innovation, the defense force. I guess  
21 it's a mixture of them.

22 Q. What products that we might know have been  
23 invented in Israel?

24 MR. OSTROW: Objection, Your Honor. It's  
25 irrelevant.

1                   THE COURT: Overruled.

2           A.    I'm not sure I'm familiar with all of them,  
3 but this disk key that you all use was invented in  
4 Israel.

5           Q.    Like the little thumb drive, or what do you  
6 call it?

7           A.    Disk key, I think.

8           Q.    Is that the same as the thumb drive that plugs  
9 into a computer?

10          A.    I guess.

11          Q.    We can hold one up, but are there any other  
12 examples?

13          A.    I think that most of the Intel processors that  
14 you use in laptops and PCs are designed in Israel, and  
15 probably many others.

16          Q.    Are there highways that you can drive down  
17 there where you can see companies like Cisco and  
18 Microsoft and other companies located in Israel because  
19 of that high-tech development?

20          A.    I'm not sure that you will call them highways  
21 in American terms, but there are roads that you could  
22 see a lot of companies like that, a lot of buildings.

23          Q.    Does Cisco have an office in Israel?

24          A.    I am not sure about that. They used to have  
25 some R&D group, but I'm -- I don't know.

1           Q.    I don't think it's necessary to go into any  
2 detail, but because it's been raised, I want you to talk  
3 to the jury a little bit about the progress that Commil  
4 Limited made.

5                    Would you address what was, after the funding  
6 came in, the sort of business plan of Commil Limited?

7           A.    It was to have a product that would allow  
8 people to use their cellular phones as cordless phones  
9 wired at home, so they would not have to pay for the  
10 cellular operator while getting calls at home, yet they  
11 can use the same phone with the same contact book, and  
12 the nice look and feel that cell phones have also at  
13 home or in -- in work without going through cellular  
14 infrastructure.

15                   We raised money for that and recruited people.  
16 At the top, I think, the company had 30 employees.

17           Q.    All right. And turning that in terms, let's  
18 say, of the courtroom -- let's say I had this phone with  
19 a short-range communication protocol, let's say, Wi-Fi  
20 or Bluetooth, and there was a system in here, and I,  
21 let's say, with the cellular phone might be paying 50  
22 cents a minute or those sort of things.

23                   How would this system that your company was  
24 working on let me not have to pay 50 cents a minute for  
25 those calls with my cellular phone?

1           A.     We took advantage of the fact that cellular  
2 phones started to have additional RF technology, other  
3 than the cellular of technology also back then Bluetooth  
4 today, Wi-Fi, which is short-range communication  
5 protocol, in addition to the cellular protocol.

6                     And then when you're in the building, the  
7 phone would have initiated the call through the  
8 Bluetooth or Wi-Fi to the nearest access point and from  
9 there to the local telephony system.

10          Q.     At the time in early 2000, when you decided  
11 that would be the direction of the company, what were  
12 the charges, typically, of cellular companies in Israel?

13          A.     I don't remember. They were very high, but I  
14 don't recall the numbers.

15          Q.     And what was the thinking about how such a  
16 product would be usable in people's offices?

17          A.     We had business plan that showed that it could  
18 save an organization a lot of money, and in addition,  
19 increase the people -- the employees' availability.  
20 It also addressed the other problems, like if somebody  
21 is calling the switchboard and asking for a Mr. Smith  
22 and he's not near his desk, nobody can reach him. But  
23 with this system, the switchboard could just dial  
24 forward to his extension, and it would go to his  
25 cellular phone whenever -- wherever he is in the

1 building.

2 Q. Did Commil Limited, as it was putting together  
3 its business plan in early 2000, consider other  
4 short-range communication protocols than Bluetooth?

5 A. Not really, because the business model was  
6 based on the cellular phones, and back then, there was a  
7 clear road map how Bluetooth goes into the cellular  
8 phones. And there was no -- there were no other  
9 technologies that were going to the phone back then.  
10 Later in 2001/2002, we began to see a road map -- a  
11 similar road map for Wi-Fi, but it took quite a while  
12 until it really happened.

13 Q. When the three of you worked on the patent  
14 application that became the '395 patent at -- were you  
15 aware of Wi-Fi at the time?

16 A. Sure.

17 Q. Okay. Then why did the business choose to go  
18 commercially in the beginning with the Bluetooth device  
19 instead of a Wi-Fi device?

20 A. I think it's a mixture of several things.  
21 One, Wi-Fi began some -- sometime in 1990, around 1990,  
22 and it was not catching up as it was supposed to. So in  
23 2000, it was over its hype and nobody really developed  
24 major technologies on that.

25 Bluetooth was -- it's also a mixture of



1 politics between companies. Bluetooth was founded by  
2 Nokia and Ericsson being cellular phone manufacturers,  
3 and they pushed that into the cellular phones.

4           It's also a matter of geography. Wi-Fi back  
5 then was considered an American technology while  
6 Bluetooth was considered European technology. So it's  
7 not necessarily the best thing to do, but that was the  
8 dynamic.

9           And also, there was power consumption concerns  
10 that back then Wi-Fi was consuming too much power, and  
11 Bluetooth was designed to be low-power, which is very  
12 important in batteries.

13          Q.    So would it be fair to say, based on those  
14 factors, that it was a -- a business decision, a  
15 commercial decision on the direction that y'all wanted  
16 the company to go at that time?

17          A.    Absolutely.

18          Q.    Had -- did things change four or five years  
19 later as far as Bluetooth and Wi-Fi?

20          A.    Yes, it did. Bluetooth -- first of all,  
21 Bluetooth had the same curve that happened to Wi-Fi. We  
22 see that in every technology. It starts with the hype.  
23 Many companies going in, things doesn't go as smoothly  
24 as expected and then it goes down.

25                So in 2004, Bluetooth was where Wi-Fi was in

1 the year 2000. So it was like a dead duck, while Wi-Fi  
2 was catching up for new applications, because later  
3 computers became more common, and Wi-Fi -- the Wi-Fi  
4 manufacturers moved toward this direction.

5 And also, cellular phones having better  
6 processing power and better batteries. And from the  
7 other hand, Wi-Fi having improvements to -- to have  
8 lower power consumption, this led a trend to put Wi-Fi  
9 in cellular phone.

10 Q. Would it be fair to say that they were  
11 competing technologies as the 2000 years were passing in  
12 terms of which would be more commercially attractive to  
13 people?

14 A. Not really, because they addressed different  
15 markets.

16 Q. Explain what you mean.

17 A. Wi-Fi -- it's like Wi-Fi started with  
18 replacing cables that connected PCs in an office and  
19 shifted into mobile devices. And Bluetooth started as  
20 something between -- to connect the phone and the  
21 headset and cordless telephony like very small things.

22 And I think that they a little bit overlapped  
23 over time, but I wouldn't say that they were  
24 head-to-head competing overall. On some applications,  
25 maybe.

1       Q.    When based on your experience and training in  
2 your work on what you and I have been discussing, how  
3 similar or different were Bluetooth and Wi-Fi as far as  
4 technology goes?

5       A.    They have lot of similarities and a lot of  
6 differences.  Similarities, both being short-range  
7 wireless protocols; they both support voice and data;  
8 they both use digital technology, meaning that --

9       Q.    What kind of technology?

10      A.    Digital.

11      Q.    Digital?

12      A.    Meaning that it's packets of data, bits going  
13 over the air.  I guess there are more common things.  
14 And from the other hand, Wi-Fi was with higher bit rate  
15 originally oriented to data for -- for computers.  Wi-Fi  
16 doesn't support all layers up to the application,  
17 meaning that if you want, for example, to browse the  
18 internet, Wi-Fi doesn't define that.  It just gives you  
19 the physical media that allow the computer to talk with,  
20 but it doesn't care what you do on top of that.

21               Later on, they had to do some tweaking for  
22 voice and other applications, but basically Wi-Fi was  
23 only supporting part of the food chain, let's say, the  
24 wireless food chain.

25               Bluetooth defined the whole layers, meaning

1 that if you press a button on your headset, in a Nokia  
2 headset, the Ericsson phone will understand this  
3 message. So in order to do this ability, Bluetooth  
4 defined all those layers, which also caused some delay  
5 in implementation, because it was more sophisticated.  
6 It took companies longer to integrate and interoperate  
7 things together.

8 Q. In designing the product, this Bluetooth  
9 product at the early stage of Commil Limited in Israel,  
10 were you working on any feature that dealt with the  
11 mobility of the product, the ability of the product to  
12 maintain a smooth voice communication as the product  
13 moved?

14 A. Maybe just for clarification, you being  
15 Commil, not myself.

16 Q. Right, right. The company that you were a --  
17 a part of at the time.

18 A. Yes. Our innovation or competitive edge was  
19 the ability to let people walk around or move while they  
20 are communicating with the system, either voice or data.  
21 So instead of having a call here and then when you walk  
22 out of the room, the call will be disconnected, to give  
23 the system cellular-like capabilities that the call will  
24 be seamlessly handed from one access point to the other.

25 Q. Elaborate a little bit on the cellular-like

1 experience and the seamless handoff. I want to be sure  
2 we're all clear about that.

3 A. I think we need to understand -- to  
4 distinguish between portable device and mobile device.

5 Q. All right. Would you do that, please?

6 A. Yes.

7 Portable device, like a laptop, is a device  
8 that you can carry on with you; it's not too heavy. You  
9 could turn it on here in the courthouse, connect to the  
10 Wi-Fi or whatever, do whatever you like, and then close  
11 it, drive to Starbucks, open it, and do that again. So  
12 it's portable in the sense that it can be used here and  
13 another place.

14 It's not mobile in a sense that if you turn it  
15 on here, connect it to the Wi-Fi, and then drive with  
16 the laptop open, which is not too safe, but let's say  
17 you do that to Starbucks, the connection will not be  
18 kept.

19 In cellular, the mobile handset keeps the  
20 communication. You could talk while driving or while  
21 moving from one place to the other.

22 Commil's technology and Commil's business was  
23 to take devices that were portable in nature, like  
24 cordless phone at home or the cordless application in a  
25 mobile phone, and allow it to be mobile in a sense that

1 this phone would be able to move between access points.  
2 Although it was not designed to switch from one access  
3 point to the other, the access point is it moves with  
4 the device, logically speaking.

5 Q. And when you say -- so when the mobile device  
6 moves from one access point to the other, what is that  
7 called when the functioning of it to allow the  
8 communication is handled from the first access point to  
9 the second one?

10 A. I don't believe I understood the question.

11 Q. Okay. So let's say there's an access point in  
12 here and there's one out in the hall. If I move from  
13 here out there and it remains cellular-like, what do you  
14 call it? Handoff, pass off? I heard you say --

15 A. It's handoff or handover. One is U.S. term  
16 and one is European. And I never remember who is who.

17 Q. But the handoff or handover relates to going  
18 from one access point to the other without any  
19 interruption in what you're doing?

20 A. Yes, sir.

21 Q. How in Commil Limited's development of its  
22 Bluetooth product was that achieved, if it was?

23 A. We had several names for that, but one -- one  
24 of them being a virtual access point meaning that --

25 Q. A virtual?

1       A.    Virtual access point.

2       Q.    Go ahead.

3       A.    Meaning that if you have access points around  
4 the building, the access points cannot move when the guy  
5 goes. They cannot physically move, but they're  
6 logically being moved, meaning that the state machine in  
7 the formation that the access point has about the  
8 connection with the device, is it connected, is it in  
9 the middle of a phone call, what channel did you get for  
10 this call, what is the exact timing of the  
11 communication.

12            This moves from one access point to the other  
13 in a very sophisticated way, so when the mobile unit  
14 moves, this state machine and some parameters are moving  
15 with it.

16       Q.    And what moves the information in the state  
17 machine of Access Point 1 to have that state machine or  
18 the state data to the second access point?

19       A.    The system had, in addition to the access  
20 point, a switch or a controller that provided the  
21 communication with the external world and also handled  
22 the mobility.

23            So this switch would have told the access  
24 points to search for potential mobile new units that are  
25 going to arrive to the coverage area, and when this

1 switch took the decision to make this handover, he would  
2 ask one access point for its parameters and send it to  
3 the other access point.

4 Q. All right. You mentioned state machine. Can  
5 you just one more time say what that is that the  
6 controller or the switch moves from one access point to  
7 another, let's say if I'm using the system wirelessly?

8 A. I'll try to give an example.

9 In the cellular phone, when you press the  
10 digit 4, it could have different meaning if you are in  
11 the middle of the phone call and maybe will put a tone  
12 inside, or if you are dialing or if you are writing SMS.  
13 So the same action has effect, which depends on history,  
14 on what state are you now. Or when you press okay in --  
15 in the menu, it depends in what stage of the menu you  
16 are in. In some places okay it will say quit. In some  
17 cases it will say continue.

18 So state machine is saying what was the  
19 history that led me to this point, and what am I going  
20 to do in this point of time, if certain event happened.

21 Q. So if there's not in my example where I'm here  
22 using wirelessly my laptop here and then I move and  
23 become associated or connected to a second access point  
24 out there, if there isn't a state machine being handled  
25 by the switch, what's the consequence?



1           A.     You will have to restart the session.  You  
2 will dis -- be disconnected and then you will have to  
3 relog in or reassociate, depends on the exact  
4 application, and then it answers.  But you would have to  
5 reconnect.

6           Q.     All right.  Let's move forward.

7                     Was a prototype of what you've been discussing  
8 with me made by Commil Limited at some point?

9           A.     Yes.

10          Q.     What was it called, that product?

11          A.     It was called Cellarion.

12          Q.     Were you happy with the commercial popularity  
13 of that device when it was ready to be sold to the  
14 market?

15          A.     Not really.

16          Q.     And would you tell the jury why that -- that  
17 is?

18          A.     It was a mixture of reasons.  One is that our  
19 product was based on the assumption that the telephone  
20 handsets, the mobile phones, will have Bluetooth inside  
21 with cordless telephony application, meaning that we  
22 will be able to make phone call over Bluetooth with the  
23 mobile phone.

24                     This was something that was planned by the  
25 Bluetooth organization but was stopped by the cellular

1 companies.

2 Q. What do you mean stopped by the cellular  
3 companies?

4 A. Aggressively stopped. I don't remember the  
5 names. I think it was Samsung or Ericsson introduced a  
6 phone like that to the market, and after a week, they  
7 took it off the shelf, because one of the major cellular  
8 operators told me they would stop buying phones from  
9 them, if they enabled this option, because it will take  
10 revenues from the cellular operators to the fixed  
11 operators.

12 And we anticipated that there will be some  
13 fight from the cellular operators, but we didn't  
14 anticipate how strong of a fight they will give. And to  
15 prove that, 10 years later, even with Wi-Fi, you cannot  
16 really do this -- what they call today fixed mobile  
17 convergence. Use your phone, the mobile phone, as  
18 extension while at home, because cellular operators  
19 doesn't like this. So this is one reason.

20 And the other was that the product was very  
21 complicated. It took us a long time to build it, and it  
22 was too expensive. And it took a while or it would have  
23 taken a lot of money to make it commercially.

24 Q. The Cellarion?

25 A. Yeah.

1           Q.     In addition to the Chief Scientist of Israel  
2 putting a million half to 2 million in Commil Limited,  
3 by the time you're talking about, had the company raised  
4 other funds?

5           A.     Yes. It raised money several rounds. In the  
6 point of time that I'm talking about, the Cellarion, it  
7 was between some rounds. So I think at that point of  
8 time, the company raised a total of \$11 million, give or  
9 take. And the total with the funds -- with the rounding  
10 that followed, about \$15 million, but this may include  
11 the Chief Scientist. I'm not sure about that.

12          Q.     About when was it that Commil Limited realized  
13 that because of the interference of the cell companies,  
14 because of these other factors that you mentioned, that  
15 product was -- was not going to be successful  
16 commercially in the marketplace?

17          A.     It's a tough question, because the signs were  
18 there, but we were -- we were still trying to push it up  
19 the hill. So there was no clear moment when you can say  
20 we understood that.

21                   Given the crisis of the year 2001, at some  
22 point in time, because we understood that the market  
23 will be slower than we anticipated and we have to wait  
24 until the phones will be there with the application and  
25 so on, we began to look at the other possible products

1 but as side products, not as the main business of the  
2 company.

3 I'm not sure that this answers the question.

4 Q. Well, I think -- I think it does. I'm just  
5 trying to build approximately for all of us here in the  
6 courtroom the timeline. You know, we talked about the  
7 patent in late '99, the application in early 2000.

8 You've told us about once that was done, the  
9 various business choices you made about the products you  
10 wanted to test in the marketplace and the financing.  
11 So I'm just trying to help us understand through that  
12 chronology you've given where we are on the timeline.

13 Can you do that any more just as an  
14 approximation than you've done so far? If not, that's  
15 okay. But I --

16 A. Okay. So -- so no.

17 Q. Okay.

18 A. I don't really understand that.

19 Q. Okay. How long were you working on the  
20 Cellarion? You know, how long was it from the beginning  
21 to having the prototype?

22 A. I don't remember exact dates. The beginning  
23 was that we do -- did that -- before the company was  
24 established, we filed the patent but continued to design  
25 the product. I think that in the year 2002, we had a

1 working prototype. Maybe 2003, we sold a couple of  
2 those to Korea, Japan. We installed the system in  
3 Michigan in Ann Arbor in operating rooms where doctors  
4 had a way to communicate with the switchboard, because  
5 you are not allowed to use cellular phones in operating  
6 rooms. But it didn't get more than that.

7 Q. So did Commil Limited at any point consider a  
8 Wi-Fi product to test the commercial market for that?

9 A. Considered in many -- in many points of time,  
10 because this issue of when Bluetooth began to decline  
11 and Wi-Fi began its new hype, this issue has been raised  
12 every couple of months since 2001, 2002. I don't  
13 remember exactly.

14 And every some period of time, we looked into  
15 that. Usually, I objected to the company moving to  
16 Wi-Fi.

17 Q. Why is that?

18 A. Because I thought that until we see telephone  
19 sets with Wi-Fi, there is no business model that  
20 justifies switching to Wi-Fi, only because of the hype.  
21 And I also thought that the company cannot do both  
22 Bluetooth and Wi-Fi.

23 Q. Why not?

24 A. Due to resources. You need more people and  
25 you need different product with some flavors, and

1 investors were not interested in putting more money. It  
2 was, again, in the year 2001, crisis, salaries were  
3 going down, everybody were keeping their money in their  
4 hands to see how things evolved.

5           And I thought the company could not do both.  
6 And I also thought that one of the major things in  
7 startup companies is focus. If you lose focus, you  
8 don't stand a chance. If you are focused, you have  
9 better chance. Still it's not 100 percent, and I  
10 thought it was wise to focus on Bluetooth.

11       Q.    Was that a correct decision you think?

12       A.    I couldn't tell.

13       Q.    What position did you have at Commil Limited  
14 at the time we're discussing?

15       A.    I was the CEO.

16       Q.    The Chief Executive Officer?

17       A.    Yes, sir.

18       Q.    Ultimately, you left the company and based on  
19 your friends and your other colleagues there, is it true  
20 that Commil Limited at some point stopped its business?

21       A.    Yes.

22       Q.    What is your understanding as to why that  
23 occurred?

24       A.    I left the company to meet -- in 2004, I left  
25 my position as CEO. The company shifted to Wi-Fi. It

1 was like a package where the investors put more money in  
2 the company moved to Wi-Fi. And they pursued this  
3 direction for some time, a year, year and a half, and  
4 they had people working on that. I am not familiar with  
5 the details.

6 But to do a product, a full Wi-Fi product,  
7 required a lot of resources, and the investors were not  
8 willing to put those resources. So the -- there was so  
9 much the company could do with the given resources, and  
10 it ended up letting all the people go.

11 Q. In your opinion, did the company stop its  
12 business because its intellectual property as described  
13 in the patent wasn't good?

14 A. No.

15 Q. Would you explain?

16 A. I don't think that the business relates to the  
17 patent, meaning that the patent was very wide and  
18 supported a variety of technologies and innovations, yet  
19 implementation has its own rule, and the business plan,  
20 the business success has many other factors like, as I  
21 mentioned, the availability of some applications in the  
22 mobile phone, which was not in the hands of Commil.

23 Q. When you say not in the hands, you mean not in  
24 the control of -- of Commil?

25 A. Yeah.

1 Q. All right. Go ahead.

2 A. There are many other factors, when you try to  
3 take an idea or a technology to a valid product.

4 Q. All right. The party in this case is not  
5 Commil Limited, but Commil USA. Are you aware of that?

6 A. Yes, sir.

7 Q. Do you and Mr. Barak and Mr. Arazi have a  
8 percentage connected with the licensing or enforcement  
9 of this patent?

10 A. Yes, we do.

11 Q. What is that percentage?

12 A. Together, we have 18 percent out of the net  
13 income, I'll say.

14 Q. All right. The net recovery or the net  
15 outcome?

16 A. Yes. Yes, sir.

17 Q. How long has it that you and Mr. Arazi and Mr.  
18 Barak have had the 18-percent interest in this company  
19 or the revenues that it generates?

20 A. In Commil USA?

21 Q. Yes.

22 A. Maybe two years.

23 Q. During the years, I think we heard it was  
24 three, that this lawsuit has been moving to this trial,  
25 have you played any role as a consultant or expert in



1 assisting in the case?

2 A. I don't think as an expert. As a consultant,  
3 yes.

4 Q. All right. And were you paid for that work?

5 A. Yes, by the hour.

6 Q. And how much by the hour were you paid?

7 A. \$100.

8 Q. And total for assisting me and the other  
9 lawyers working on behalf of the Plaintiff, what do you  
10 think the total amount you've received for your  
11 assistance is?

12 A. Maybe \$15,000, maybe 20.

13 Q. And that's over the last two years or so?

14 A. Yes, sir.

15 Q. Tell the jury what types of things you did  
16 over the two years or so for which you charged as a  
17 consultant a hundred dollars an hour?

18 A. I was mainly looking for documents and old  
19 stuff from Commil, going over thousands of e-mails and  
20 files, presentations, and trying to find all the  
21 material that is relevant to this case, going over  
22 note -- old notebooks, this kind of thing.

23 Q. And who asked you to do that?

24 A. You did.

25 Q. All right. Were all those documents that you

1 were searching for and going through located in Israel  
2 as opposed to the United States?

3 A. Yes.

4 Q. Did you give a deposition in this case where  
5 you sat down under oath and let the lawyers for Cisco  
6 ask you questions?

7 A. Yes, twice.

8 Q. And where did that occur?

9 A. In Israel.

10 Q. So the lawyers for Cisco came all the way over  
11 to Israel and twice took your deposition in the case?

12 A. Yes, sir.

13 Q. Finally, sir, though you've described the  
14 process that led up to obtaining a patent, we really  
15 didn't go into your views or opinions about whether the  
16 Cisco products violate that patent or not; is that  
17 correct?

18 A. Yes.

19 Q. And why is it that you haven't given any  
20 opinions or views about comparing the '395 patent on  
21 which you're an inventor to the Cisco products?

22 A. I never dived into the -- because of the Cisco  
23 product and the Cisco intellectual property to be able  
24 to evaluate that.

25 Q. Are you here as an expert witness or just to

1 tell the facts of your involvement that relates to  
2 Commil Limited in the obtaining of the '395 patent?

3 A. I don't think I'm an expert witness.

4 Q. All right. And because you aren't expressing  
5 an opinion about the comparison between the '395 patent  
6 and the Cisco products, would you just leave that up to  
7 the experts who have evaluated that?

8 A. Yes, sir.

9 MR. WERBNER: I'll pass the witness, Your  
10 Honor.

11 MR. OSTROW: May it please the Court.

12 THE COURT: Cross-examination?

13 MR. OSTROW: Thank you, Your Honor.

14 Before I do that, with the Court's  
15 permission, I'd like to hand up some witness binders.

16 THE COURT: Of course.

17 MR. OSTROW: Ms. Lockhart?

18 COURTROOM DEPUTY: Yes. Here you go,  
19 Judge.

20 CROSS-EXAMINATION

21 BY MR. OSTROW:

22 Q. So for reasons that may or may not be clear --

23 MR. OSTROW: May I approach the witness,  
24 Your Honor?

25 THE COURT: Yes.

1           Q.     (By Mr. Ostrow) There are two separate  
2 binders. There's an original binder which is a little  
3 thicker, and then the supplemental binder, and I'll tell  
4 you which binder, if at all, we're going to look at.

5           A.     Okay.

6           Q.     All right. Good morning, Mr. Soffer.

7           A.     Good morning.

8           Q.     We've never met before, have we?

9           A.     I don't think so.

10          Q.     So I thought I'd take the opportunity to  
11 introduce myself.

12                 My name is Jeffrey Ostrow. Would it be okay  
13 if I asked you some questions this morning?

14          A.     Yes, sir.

15          Q.     I want to focus your attention back to the  
16 beginning when you were meeting with Mr. Arazi and  
17 Mr. Barak, all right?

18          A.     Okay.

19          Q.     That was about in the second half of 1999?

20          A.     Yes.

21          Q.     You testified on direct that the three of you  
22 got together and were discussing a number of ideas?

23          A.     Yes.

24          Q.     You took notes at these meetings, sir, didn't  
25 you?

1           A.     Most of them, yes.

2                     MR. OSTROW:   Can we have DTX1040?

3           Q.     (By Mr. Ostrow) Sir, these are your notes in  
4 evidence from the December 15th, 1999 meeting. Do you  
5 remember these notes?

6           A.     The letters are too small for me.

7           Q.     We can blow it up, at least blow part of it  
8 up.

9                     Do these look like your notes from that  
10 meeting from December 1999?

11          A.     I cannot tell -- just let me review this for a  
12 second.

13          Q.     Please, sir, take your time.

14          A.     Yeah, it looks like that. I haven't read all  
15 the text, but yes.

16                     MR. OSTROW:   Can we focus in, Tracy, on  
17 Bullet Point 10?

18          Q.     (By Mr. Ostrow) Sir, on December 15th, 1999,  
19 you and Mr. Arazi and Mr. Barak were discussing  
20 Bluetooth, right?

21          A.     In addition to all other ideas, yes.

22          Q.     And as indicated in the notes and specifically  
23 where Tracy's highlighting right now, you had not yet  
24 read the Bluetooth standard at December 15th, 1999; is  
25 that right?

1           A.    I assume we haven't read at all.  Maybe we  
2 read part of that, yes, but we haven't read it all.

3           Q.    And you agreed, the three of you, that -- at  
4 that meeting that you'd take some time to study the  
5 standard.

6                   Do you recall that?

7                   I can just point you specifically to a  
8 provision of the document, sir.  Each of you have little  
9 tasks to do according to this document, and each of you  
10 is listed as having to study the Bluetooth standard.

11                   Do you see that?

12          A.    Yes, sir.

13          Q.    Okay.  I can take you through all three --

14          A.    No, no, it's okay.  I see that.

15          Q.    Okay.  And after this meeting, in fact, you  
16 did go and study the Bluetooth standard, didn't you?

17          A.    Yes, we did.

18                   MR. OSTROW:  And let's put up 1041.

19          Q.    (By Mr. Ostrow) Let's look at the English  
20 version.

21                   MR. OSTROW:  Thank you.  Let's blow up  
22 Bullet No. 1.

23          Q.    (By Mr. Ostrow) Do you recall these being your  
24 notes from the December 16th meeting?

25          A.    I don't recall, but I accept this document.

1 Q. Okay. And it seems, sir, at this meeting --

2 MR. OSTROW: If we could put a highlight  
3 on the first sentence.

4 Q. (By Mr. Ostrow) It seems, sir, at this meeting  
5 you've discovered what I think you described as a  
6 problem.

7 MR. OSTROW: If we can, extend it down to  
8 second sentence. That would be great.

9 Q. (By Mr. Ostrow) The Bluetooth standard, right?  
10 It says it seems that the standard does not support the  
11 subject of handoff in a very clear way.

12 Do you see that?

13 A. Yes, sir.

14 Q. Do you recall identifying that being a problem  
15 on the Bluetooth standard?

16 A. At one point of time, yes.

17 Q. So right about this time, December of 1999?

18 A. Maybe, give or take few days, yes.

19 Q. Okay. So we're talking about a few days?

20 A. Yeah, yeah. Yeah, yeah.

21 Q. Okay. And specifically, sir, the three of you  
22 came to understand that the Bluetooth standard did not  
23 support mobility between state -- let me start over  
24 again.

25 You came to understand that the Bluetooth

1 standard did not support mobility between base stations,  
2 right?

3 A. This is correct.

4 Q. And that's what you told the Patent Office,  
5 right?

6 A. I -- I don't think that we told the Patent  
7 Office that Bluetooth doesn't support it. I don't  
8 remember the exact phrasing, but the technology was how  
9 to use -- how to do such handovers and technology that  
10 doesn't support that, yes.

11 Q. Let's take a quick look just for a second at  
12 the provisional application, which is DTX1051, and  
13 specifically at Page 7 of DTX1051.

14 MR. OSTROW: If we can blow up the second  
15 paragraph. The second paragraph -- or am I wrong? Is  
16 it the first paragraph?

17 Hold on a second. I don't want to waste  
18 your time, sir.

19 Q. (By Mr. Ostrow) By the way, these documents  
20 are in front of you in these binders, if you want. This  
21 one is in the first binder.

22 A. First being the top one?

23 Q. The thicker of the two, yes, sir.

24 A. Okay.

25 Q. So it's in the second paragraph about halfway



1 down. Bluetooth does not support mobility between base  
2 stations, since it was primarily designed for  
3 short-range communication.

4 Do you see that?

5 MR. OSTROW: Maybe Tracy can highlight  
6 it.

7 Q. (By Mr. Ostrow) Are you on Page 7?

8 A. Okay.

9 Q. All right. Good enough.

10 MR. OSTROW: We can put that one aside.

11 Q. (By Mr. Ostrow) And the three of you -- I  
12 think you testified on direct, the three of you  
13 ultimately came up with what you thought was a solution  
14 to this problem, right?

15 A. Yes, we did.

16 Q. And the origin of this idea came from thinking  
17 about Bluetooth, right?

18 A. Yes.

19 Q. You wanted to take protocols not designed for  
20 mobility. You wanted to make them mobile, right?

21 A. That was the original idea, yes.

22 Q. When you came up with the solution, and I  
23 think Mr. Werbner asked you and you said it was right  
24 before the year 2000, right?

25 A. Yes.

1           Q.    When you came up with the solution, you hadn't  
2 looked at the 802.11 protocol, the Wi-Fi protocol, to  
3 determine whether or not it supported mobility, had you?

4           A.    Not at this point.

5           Q.    And a little while after the documents we just  
6 looked at, specifically your notes, you went through  
7 venture capitalists, right?

8           A.    Yes.

9           Q.    And you raised, I think you testified at this  
10 stage, ballpark \$15 million?

11          A.    At this stage, only 1 -- \$1 million.

12          Q.    Oh, so at this point, we're still talking  
13 about the very early stage fund raise?

14          A.    Excuse me. I didn't know to what point of  
15 time you're referring.

16          Q.    Let me be clear then. So at the time you  
17 filed the patent application, you had raised about a  
18 million and a half to \$2 million?

19          A.    After we filed the application, I think.

20          Q.    But at some -- I don't mean to interrupt, sir.

21          A.    Or right in -- I don't remember the exact  
22 timing, but I think that we first filed the patent and  
23 then got the funding.

24          Q.    Okay. But at some point in time during the  
25 evolution of the company, you had raised about \$15

1 million?

2 A. Overall, yes.

3 Q. When you filed the patent application, you  
4 were familiar, and I think you testified this -- on this  
5 to direct -- that you -- you were already familiar with  
6 the Wi-Fi protocol, right?

7 A. Yes.

8 Q. You didn't mention the Wi-Fi protocol in your  
9 patent application, right?

10 A. Maybe we did not.

11 Q. You testified on direct that technologies are  
12 subject to curves, right? I think that's the word you  
13 used.

14 A. Yes, sir.

15 Q. So it was possible at that point that the  
16 Wi-Fi technology would be one that would come back up on  
17 a curve some day, right?

18 A. Right.

19 Q. And you also testified there were significant  
20 differences between the two technologies, Wi-Fi and  
21 Bluetooth, right?

22 A. Yes, sir.

23 Q. The patent issued on, I think, August 6th,  
24 2002. Do you recall that?

25 A. Maybe granted, not issued.

1 Q. Fair enough.

2 A. Okay.

3 Q. The date on the front of the patent is August  
4 6th, 2002?

5 A. Yes, sir.

6 Q. Have you seen the Court's claims  
7 construction --

8 A. No, sir.

9 Q. -- in this case?

10 Okay. Do you understand that the patent  
11 requires short-range protocol?

12 A. Yes, sir.

13 Q. Do you understand that it requires all the  
14 real-time to happen in one place?

15 A. I think that it requires the -- the -- the  
16 time-sensitive functions to be rendered at the access  
17 point, yes.

18 Q. And in order to do that, the protocol needs to  
19 be divided?

20 A. Yes.

21 Q. Who divides the protocol?

22 A. I don't understand the question.

23 Q. So is it the person who designs the system  
24 that divides the protocol, or is it the customer upon  
25 buying the product and rolling it out in their office

1 that divides the protocol?

2 A. Do you mean who decides where to divide the  
3 protocol?

4 Q. Yes.

5 A. The guy who develops the system.

6 Q. And that -- is that implemented in the product  
7 by the person who designed the system?

8 A. Yes, sir.

9 Q. All right. The customer doesn't have any  
10 impact or input into where the protocol is divided?

11 A. I really hope he shouldn't.

12 Q. He shouldn't and he doesn't, in fact, right?

13 A. He doesn't, right.

14 Q. You have a lot of education in the wireless  
15 space, don't you?

16 A. Education? I have experience. I don't know  
17 if my education is exactly in the wireless specifically.

18 Q. You have a lot of electrical engineering  
19 education?

20 A. Yes, sir.

21 Q. And a lot of experience in wireless space?

22 A. Yes, sir.

23 Q. Would it be fair to say you've worked for  
24 years in the wireless space?

25 A. Yes, sir.

1           Q.    Would it be fair to say that your co-inventor,  
2 Mr. Arazi, has a lot of experience in the wireless  
3 space?

4           A.    Yes.

5           Q.    And he's worked for years in the wireless  
6 space?

7           A.    Yes, he did.

8           Q.    And your other inventor co-inventor,  
9 Mr. Barak, has lots of experience in the wireless space?

10          A.    Yes.

11          Q.    And he also worked for years in the wireless  
12 space. Didn't he also work for years in the wireless  
13 space?

14          A.    Yes, he did.

15          Q.    I want to turn your attention, if I might, to  
16 the Bluetooth product, the Cellarion product that you  
17 developed while you were at Commil. And when I say you,  
18 I will use it the same way that you used it, which is  
19 Commil.

20          A.    Okay.

21          Q.    At the time you were developing the product,  
22 Commil had about 30 or so employees?

23          A.    Again, when we started developing the product,  
24 we were only three. After a year, we were 13. And  
25 after two years, we were 30. And the product was

1 developed during this period.

2 Q. So during this period, while you were  
3 developing the product, you had between three and thirty  
4 employees?

5 A. Yeah, but I would say the average was 20 -- 20  
6 plus, 25.

7 Q. Fair enough.

8 In this period of time, all of you were  
9 focused on the same thing. It was this Bluetooth  
10 Cellarion product, right?

11 A. Yes.

12 Q. Okay. And at this point, a couple years in,  
13 let's say you had raised your \$15 million; is that fair?

14 A. I didn't get that.

15 Q. By the time you had 30 employees, had you  
16 raised the \$15 million?

17 A. No. When we had 30? 30?

18 Q. Yes, 30, 3-0, sir.

19 A. Although the last round was connected to  
20 letting half of the people go, so it's not really  
21 accurate, but give or take.

22 Q. Give or take. And you built the Cellarion  
23 product from the ground up, right?

24 A. Yes, sir.

25 Q. And Cellarion used the Bluetooth protocol,

1 didn't it?

2 A. Used? It was supporting devices over the  
3 Bluetooth protocol.

4 Q. So it supported devices that used the  
5 Bluetooth?

6 A. Yes, sir.

7 Q. All right. And the Cellarion system used the  
8 invention claimed in the '395 patent, didn't it?

9 A. It uses -- used some of them. I don't think  
10 necessarily used it all.

11 Q. But it used at least some of the invention in  
12 the '395 patent?

13 A. Yes, sir.

14 Q. And the Cellarion product, as you testified on  
15 direct, was not commercially successful, was it?

16 A. No, it was not.

17 MR. OSTROW: Can we put up 1055, please?

18 Q. (By Mr. Ostrow) July 15th, 2002, sir, this is  
19 an e-mail from you to -- again, if you want to take a  
20 look at it in hard copy, I believe it's in your first  
21 binder.

22 A. That's fine.

23 Q. Do you see that?

24 A. Yes.

25 Q. You still had some pretty fundamental



1 questions about how Wi-Fi worked, didn't you?

2 In other words, you were asking about roaming  
3 and handover, how does the frequency selection go, voice  
4 over WLAN. You were asking all these questions, right?

5 A. What's the question?

6 Q. Were you asking Mr. Arazi some questions?

7 A. Yes.

8 Q. And these questions were about Wi-Fi?

9 A. Yes, sir.

10 Q. And you were asking Mr. Arazi these questions,  
11 because you believed he was the one who knew in most of  
12 the company about Wi-Fi?

13 A. Not really knew, but he was the one that I  
14 thought should get the answers, not necessarily from  
15 his -- from his head.

16 Q. So maybe from someplace else?

17 A. Maybe go to literature or talk with others.  
18 The fact that I'm asking him the question doesn't say  
19 that he needed to know that by heart.

20 Q. And, in fact, a couple months later, you asked  
21 him whether or not it was time to do some homework on  
22 Wi-Fi, didn't you?

23 A. Probably.

24 MR. OSTROW: Let's take a look at 1036,  
25 the second -- second e-mail.

1           Q.     (By Mr. Ostrow) And you are, Mr. Soffer,  
2 asking Mr. Barak and Mr. Arazi whether it's time to do  
3 some homework.

4                     Do you see that?

5           A.     Yes.

6           Q.     And at this point, sir, I think as you  
7 mentioned a minute ago, one of the things you were  
8 considering was asking a third party to come in and help  
9 you out with Wi-Fi, right?

10          A.     I don't believe I said that, but it's written  
11 here.

12          Q.     Do you --

13          A.     It's written here. I didn't say that before.  
14 I think you asked me.

15          Q.     I'm sorry. Do you believe it to be true?

16          A.     Yes, sir.

17          Q.     Okay. Fair enough. I don't want to get mixed  
18 up in some words with you.

19                     And around this time, the end of '02,  
20 beginning of '03, Commil asked a gentleman named Micky  
21 Golan to help out?

22          A.     I don't remember when it was, but, yes, it  
23 sounds about the right period.

24          Q.     Mr. Golan was an outside consultant?

25          A.     Yes.

1           Q.    He was knowledgeable when it came to talking  
2 about technology?

3           A.    Yes, he was.

4           Q.    And you trusted him?

5           A.    To some extent.

6           Q.    And Commil, though, relied on him with respect  
7 to the 802.11 and Bluetooth standards, right?

8           A.    Relied on him? Got his opinion. We didn't  
9 rely on him.

10          Q.    Did you hire him to help you out with the  
11 802.11 and Wi-Fi product?

12          A.    We hired him to do some evaluation for us  
13 between technologies or what Commil had to do with the  
14 Wi-Fi, yes.

15          Q.    In order to figure out what Commil had to do  
16 to implement its solution in Wi-Fi?

17          A.    Yes.

18          Q.    All right.

19                   MR. OSTROW: Let's take a look at 1061,  
20 Tracy.

21          Q.    (By Mr. Ostrow) So this is a report that  
22 Mr. Golan produced for Commil. Do you recognize it?

23                   If you want to take a better look, this is  
24 also in the first binder.

25          A.    I don't remember that, but I accept that as

1 correct.

2 Q. You accept that as correct.

3 And it says in the very first page of the  
4 report -- there it is in the general section. It  
5 appears that Mr. Golan is reporting back to Commil about  
6 the questions he had been asked to look at.

7 Do you see that?

8 A. Yes, sir.

9 Q. So the two questions were, does the technology  
10 available today support handover with application to  
11 voice communication.

12 Do you see that?

13 A. Yes.

14 Q. And is Commil's technology adaptable to  
15 support 802.11b, right?

16 A. Right.

17 Q. So you're asking Mr. Golan, Commil again --  
18 when I said you, I mean Commil -- is asking Mr. Golan to  
19 help it out with the 802.11 or Wi-Fi project, right?

20 A. Not Wi-Fi project. To evaluate -- to evaluate  
21 the possibilities or the consequences of going to Wi-Fi.  
22 There was no Wi-Fi project.

23 Q. Not yet?

24 A. Not in this time.

25 Q. Okay.

1                   MR. OSTROW: Let's take a look at the  
2 last page. Can you blow up the summary?

3           Q.     (By Mr. Ostrow) Mr. Golan's reporting back to  
4 Commil, including you, that based on the gathered  
5 information, disregarding Reference 12, the present  
6 802.11b provides fast handover that is easily  
7 implemented by the mobile device and is adequate for  
8 voice communication.

9                   Do you see that?

10          A.     Yes, sir.

11          Q.     Second sentence says: I do not recommend for  
12 Commil to try to modify their technology to support  
13 802.11b.

14                  Do you see that?

15          A.     Yes, sir.

16          Q.     And Mr. Barak reported these reports to you,  
17 didn't he?

18          A.     Either him or Nitzan. I don't recall.

19          Q.     But somebody reported these reports?

20          A.     Somebody, yes.

21                  MR. OSTROW: Let's take a look at, I  
22 believe the next one is 1062.

23          Q.     (By Mr. Ostrow) This is an e-mail from  
24 Mr. Barak to you. I think this is exactly the language  
25 we just saw from Mr. Golan's report, but please, if you

1 have any reason to disbelieve me, go ahead and go back  
2 and look at 1061.

3 First sentence: Based on the gathered  
4 information, et cetera, the present 802.11b provides  
5 fast handover that is easily implemented by the mobile  
6 device and is adequate for voice communication.

7 Do you see that?

8 A. Yes.

9 Q. What is Mr. Golan telling you there?

10 A. He is telling us that according to his  
11 opinion, there is no value in Commil going into this  
12 business.

13 Q. Because?

14 A. Technology -- technologically speaking.

15 Q. Technologically speaking.

16 A. Yes.

17 Q. Because the problem that you were trying to  
18 solve had already been solved in Wi-Fi, right?

19 A. That is what he is saying. Solve but does not  
20 exist. That was his -- that is what he's saying, yes.

21 Q. Solve but do not exist.

22 Let's look at the next sentence: I do  
23 recommend for Commil to try to modify their technology  
24 to support 802.11b.

25 Do you see that?

1           A.     Yes.

2           Q.     And you agreed with that statement when he  
3 made it, didn't you?

4           A.     For a different reason.

5           Q.     But you agreed?

6           A.     Yes.

7           Q.     But by 2004, sir --

8                   MR. OSTROW:  You can take that down,  
9 Tracy.

10          Q.     (By Mr. Ostrow) -- would it be fair to say  
11 that Wi-Fi was pretty critical to Commil's survival?

12          A.     It's a tough question.  Commil could not  
13 survive on Bluetooth.  Was Wi-Fi good enough for Commil  
14 survival, I don't know.

15          Q.     Did you have anything else planned at the end  
16 of 2004?

17          A.     I myself to spend time with my family, yes.

18          Q.     Okay.  I understand.

19                   So I'm speaking specifically about Commil now.  
20 Other than the Bluetooth product, which as you said,  
21 didn't do particularly well in the market, at this point  
22 in 2004, Commil was focusing on a Wi-Fi solution, wasn't  
23 it?

24          A.     Yes, but I was not the CEO back then, so I was  
25 not involved in the details.

1 Q. But you know it was happening?

2 A. Yes, sir.

3 Q. And you were still -- you had resigned as CEO  
4 at some point, but you were still on the Board of  
5 Directors, weren't you?

6 A. Yes, sir.

7 Q. And you had responsibilities as a Board  
8 member, right?

9 A. Yes, sir.

10 Q. You were to pay attention to what was going on  
11 at the company, right?

12 A. Yes.

13 Q. Okay. And you did that?

14 A. Yes.

15 Q. Okay. And by November 2004, would it be fair  
16 to say that Commil didn't even have the beginning of a  
17 working solution for Wi-Fi?

18 A. I don't remember the timeline. I know that  
19 they were working on that. I don't remember the  
20 milestones or things like that.

21 MR. OSTROW: Let's take a look at 1069.  
22 Blow that up.

23 Q. (By Mr. Ostrow) It's an e-mail from Mr. Dovev  
24 who replaced you as CEO, right?

25 A. Yes.



1 Q. Let me back up and lay a foundation.

2 Mr. Dovev replaced you as CEO when you stepped  
3 down?

4 A. Yes, sir.

5 Q. And here's an e-mail from him. The first part  
6 says --

7 MR. OSTROW: Through the third -- the  
8 third line, please, Tracy.

9 Q. (By Mr. Ostrow) My concern is that coming up  
10 with a Wi-Fi-based proposition is a bit too mature for  
11 us. And I tried make clear. Perhaps I failed. We have  
12 a conceptual framework for how to make the thing work,  
13 but not even the beginning of a working solution.

14 Do you see that?

15 A. I see that.

16 Q. Is that a fair statement as to where Commil  
17 was on its Wi-Fi solution by November of 2004?

18 A. I don't know. I don't have -- I'm not one of  
19 the people that this e-mail was sent to, but I don't  
20 know.

21 Q. Would it be --

22 A. I don't remember.

23 Q. Would it be maybe better to ask Mr. Arazi that  
24 question?

25 A. Maybe.

1 Q. At some point, Commil started to build a Wi-Fi  
2 team, didn't it?

3 A. Yes, sir.

4 Q. And in December 2004, Commil raised an  
5 additional \$4.7 million, right?

6 A. I don't remember the numbers, but it sounds  
7 right.

8 MR. OSTROW: Let's put up 1056 at --  
9 there it is.

10 Q. (By Mr. Ostrow) Here's a Commil document from  
11 right around then, December 2004, and it references the  
12 \$4.7 million.

13 Do you see that?

14 A. Okay.

15 Q. Do you have any reason to believe that's not  
16 the case?

17 A. No.

18 Q. Okay. So at the end of December 2004, Commil  
19 had raised a little less than \$5 million, right?

20 A. Yes.

21 Q. And that money was used for presumably the  
22 Wi-Fi project, right?

23 A. If I remember correctly, this also included  
24 the bridge loan of 1.7 that was given before, but --  
25 never mind.

1           Q.     Never mind.

2                     But the money -- at this point, December '04,  
3 we've discussed that Commil was focused on the Wi-Fi  
4 product, right?

5           A.     Yes. I think that we were -- we were still  
6 doing some Bluetooth stuff, but they had a lot of  
7 attention on Wi-Fi.

8           Q.     In late 2004, Commil began to look to hire  
9 engineers in Wi-Fi, right?

10          A.     Sometime in 2004, yes.

11          Q.     And you personally interviewed a few of those  
12 engineers?

13          A.     I doubt it. If I did, then I don't remember.

14          Q.     You don't remember interviewing a guy named  
15 Andrei Kojukhov?

16                     And I'll try to spell that for the court  
17 reporter, K-O-J-U-K-H-O-V. How is that?

18          A.     I don't, but I interviewed like 15,000 people  
19 in the 20 years that I'm in the business, so I don't  
20 recall.

21          Q.     So you -- but you had reviewed a lot of people  
22 in connection with the Wi-Fi project at Commil, right?

23          A.     Not necessarily. Not that I recall, but  
24 maybe.

25          Q.     You don't remember meeting Mr. Kojukhov?

1           A.     No.

2           Q.     Okay.  Do you know if Mr. Kojukhov was a Wi-Fi  
3 expert?

4           A.     I don't even recall the name.

5           Q.     Do you know if Commil ever hired Mr. Kojukhov?

6           A.     Same answer.

7           Q.     Should I ask these questions to Mr. Arazi?  
8 Would he know?

9           A.     Okay.

10          Q.     Would he know, do you think?

11          A.     Maybe, yes.  He was in the company in that  
12 period, and he was working there.  I was an outsider,  
13 you know.

14          Q.     Sir, you were still on the Board of Directors,  
15 right?

16          A.     The Board of Directors doesn't meet each one  
17 of the employees, so...

18          Q.     I understand that, but it wasn't a very big  
19 company, as you've said.

20          A.     Yeah, it was not.

21          Q.     So you didn't know most of the employees at  
22 Commil?

23          A.     At that point in time, new ones, not  
24 necessarily.

25          Q.     So it's possible you met Mr. Kojukhov; you

1 just don't recall?

2 A. Yes, it's possible.

3 Q. Okay. And Mr. Kojukhov, I'll tell you, worked  
4 with Commil on a number of elements of the Wi-Fi  
5 projects. Do you have any reason to believe that's not  
6 true?

7 A. No.

8 Q. Do you know if Mr. Kojukhov was helping to  
9 determine how to split the Wi-Fi protocol?

10 A. I don't know.

11 Q. You don't know?

12 Do you know if Mr. Kojukhov looked at how  
13 other companies split their protocols?

14 A. No.

15 Q. You don't know?

16 Do you know if Mr. Kojukhov looked at CAPWAP?  
17 Do you know what CAP --

18 A. No.

19 Q. I'm sorry. You don't know?

20 A. No.

21 Q. Do you know what CAPWAP is?

22 A. I heard the name.

23 Q. Do you know if Mr. Kojukhov reported back to  
24 Commil regarding CAPWAP?

25 A. I don't know.

1                   MR. OSTROW: Let's take a look at 1138.  
2 Let's blow up the text.

3           Q.     (By Mr. Ostrow) Do you recall Mr. Kojukhov or  
4 hearing from anybody that Mr. Kojukhov reported back  
5 that -- about CAPWAP, that this baby is not ours?

6           A.     Not really.

7           Q.     Should I ask Mr. Arazi this question?

8           A.     Okay.

9           Q.     Would he know better than you would?

10          A.     He's one of the people in this correspondence.

11          Q.     Do you know, sir, whether or not Commil's  
12 Wi-Fi solution, the one he was working on at the end of  
13 the 2004 and 2005 and perhaps earlier than that, was  
14 based on the '395 patent?

15          A.     I think it does, but I don't know that  
16 directly.

17          Q.     Do you think it does?

18          A.     Yes. Or it was supposed to.

19          Q.     I'm sorry. I missed that.

20          A.     Or was supposed to.

21          Q.     It was supposed to.

22                   Do you know whether or not Commil went and  
23 hired a consulting firm to help it with the Wi-Fi  
24 project?

25          A.     I didn't know that.

1 Q. Do you -- have you ever heard --

2 A. I don't remember that.

3 Q. You don't remember that?

4 Did you ever hear of a company called Tata  
5 Elxsi?

6 A. No.

7 Q. No?

8 A. Don't -- don't remember.

9 Q. I'll spell that for the court reporter.

10 A. Okay.

11 Q. It's T-A-T-A. Next word, E-L-X-I-S -- S-I.  
12 I'm sorry.

13 A. Is it an Indian company?

14 Q. It is an Indian company.

15 A. Okay.

16 Q. You didn't know that Commil went out and hired  
17 an Indian company to help it with its development of the  
18 Wi-Fi solution?

19 A. If I knew, I forgot that.

20 MR. OSTROW: Let's take a look at 1058.  
21 1058. Sorry.

22 Q. (By Mr. Ostrow) Have you seen this before?

23 A. It's too small for me.

24 Q. All right. 1058 is in your supplemental  
25 binder, if you want to look at it. It's the smaller of

1 the two binders.

2 A. 1058?

3 Q. Yes, sir. It should be in numerical order  
4 inside the binder.

5 A. Okay. I found that.

6 Q. You found it?

7 A. Yes.

8 Q. Sir, this is a document from -- I'm not even  
9 going to try to keep saying this. Can I just call them  
10 Tata? Would that be okay?

11 A. Fine with me.

12 Q. This is a document from Tata, right?

13 MR. WERBNER: Your Honor, I'm sorry to  
14 interrupt. Could we just have the date of that?

15 MR. OSTROW: I can try to find it for  
16 you, Mr. Werbner.

17 MR. WERBNER: If it takes too much time,  
18 that's fine. We'll find it later.

19 MR. OSTROW: I'm not sure the document is  
20 dated, but it's --

21 THE COURT: The bottom of the page seems  
22 to indicate May 5th of '05.

23 MR. OSTROW: Oh, you're right. Thank  
24 you, Your Honor.

25 THE COURT: Not this page.



1 MR. OSTROW: One of the other pages?

2 THE COURT: Yes.

3 MR. OSTROW: Thank you, Your Honor.

4 Q. (By Mr. Ostrow) Do you have any recollection  
5 whatsoever of Commil going out and hiring Tata to help  
6 it with its Wi-Fi solution?

7 A. No, sir.

8 Q. So if I showed you a series of e-mails and  
9 reports back from Tata to the company about the attempt  
10 to implement the Wi-Fi solution, you wouldn't know  
11 anything about any of that?

12 A. I doubt it.

13 Q. Should I ask Mr. Arazi?

14 A. You can.

15 Q. Do you think he may know?

16 A. I don't know.

17 Q. He was involved with the company back then,  
18 wasn't he?

19 A. Yes, sir.

20 MR. OSTROW: Let's take a look at 1081.

21 Q. (By Mr. Ostrow) This, I believe, is also in  
22 the supplemental binder, which is the smaller of the  
23 two.

24 MR. OSTROW: Middle of the page, not --  
25 middle of the page, please.

1 Q. (By Mr. Ostrow) Who's a Mr. Arik Ramon?

2 A. He was Commil's VP, R&D.

3 Q. And he reported up to Mr. Dovev?

4 A. At some point of time, he reported to me, and  
5 after that, to Mr. Dovev, yes.

6 Q. So he was working at Commil when you were the  
7 CEO?

8 A. Yeah. I think that he joined in 2004 or 2003.

9 Q. And he was the person who was in charge of  
10 R&D, so he knew an enormous amount about the technology  
11 of the company, right?

12 A. Yes. Nitzan Arazi was responsible for the  
13 technology, but he was responsible for the R&D.

14 Q. So you said Mr. Arazi was responsible for the  
15 technology?

16 A. It's a combination, yeah.

17 Q. And Mr. Ramon, the head of R&D, is reporting  
18 to Mr. Arazi.

19 And, look, there's Mr. Kojukhov. I found him.  
20 Hopefully, we spelled his name right. That's probably a  
21 better indication for the court reporter as to how to  
22 spell his name than I gave you.

23 And they're talking about shutting down the  
24 Wi-Fi project.

25 Do you see that?

1           Particularly, number two, saying: We were  
2 unable to prove that all the technical issues were  
3 solved or could be solved in a reasonable timeframe.

4           Do you see that?

5       A.    Yes.

6       Q.    We were unable, in one, to meet our target  
7 date for proof of concept.

8           Do you see that?

9       A.    Yes. Yes, sir.

10       Q.   Due to the above issues, we were unable to  
11 predict when we can have a product ready for shipping.

12           Do you see that?

13       A.    Yes, sir.

14       Q.    Along the way, sir --

15           MR. OSTROW: We can take this down.

16       Q.    (By Mr. Ostrow) -- would it be fair to say  
17 that in connection with the Wi-Fi product, Commil tried  
18 to partner with other companies?

19       A.    I guess it did.

20       Q.    Do you know how many?

21       A.    No, I do not.

22       Q.    Would it be fair to say maybe 30?

23       A.    I don't know.

24           MR. OSTROW: Let's take a look at 1094.

25       Q.    (By Mr. Ostrow) This, I believe, is the last

1 tab in the first binder, if you want to look at it. And  
2 I can spend a couple of minutes explaining why 1094  
3 comes after 1051, but, you know, the numerical order,  
4 but I won't bother you with that.

5 Here's an e-mail from Edgar Miller and  
6 Mr. Dovev and others, and then Mr. Dovev forwards the  
7 e-mail on to a number of people, including Mr. Arazi,  
8 Mr. Barak, and Mr. Ramon.

9 Do you see that?

10 A. Yes, sir.

11 Q. All right. Who is Edgar Miller?

12 A. I recall the name, but I don't know.

13 Q. Could it be that he worked for one of your  
14 investors?

15 A. I don't think so.

16 Q. What's Palladian; do you know? Do you see in  
17 his e-mail address there, it refers to Palladian?

18 A. I'm not familiar with this name.

19 Q. Doesn't refresh your recollection at all?

20 A. No.

21 Q. All right. But do you know if Mr. Miller was  
22 tasked to try to go out and try to partner with other  
23 companies?

24 A. No.

25 Q. You don't know?

1           A.     No.

2           Q.     You know that at the time, though, it was  
3 going on.  You remember the Board of Directors, right?

4           A.     Yes.

5           Q.     And so you knew at the time that Commil was  
6 out looking for partners, right?

7           A.     Yes, sir.

8           Q.     Okay.  And if we flip through this document --  
9 take as much time as you need -- I see the list goes to  
10 30 companies that Commil was trying to work with.  And  
11 we can --

12          A.     What was the name?

13          Q.     I didn't give you a name.  I just said, sir,  
14 that you can look through the document, and you'll see  
15 there's a list, a numerical list of 30 companies, if you  
16 flip through it that --

17          A.     This guy was doing a good job.

18          Q.     He was doing a good job, right?  A lot of the  
19 people -- he was doing -- he was doing the best he  
20 possibly could, right?

21          A.     Maybe.  I don't know him.

22          Q.     But it looks to you as if he was doing a good  
23 job to find a partner?

24          A.     It was a joke.  It was a joke.

25          Q.     Oh, I'm sorry.

1           And one of the people he approached -- people  
2 is a bad word. We keep getting mixed up with that one.  
3 One of the companies he proposed was Cisco?

4           A.     Maybe.

5                   MR. OSTROW: Let's take a look at bullet  
6 12, which is on Page 3 of the document. I'm going to  
7 use my screen this time. I don't want to be  
8 disrespectful to the jury and turn my back.

9           Q.     (By Mr. Ostrow) So it says: The Corporate  
10 Business Development and Acquisitions Group do not want  
11 to pursue an opportunity with Commil any further.

12                   Do you see that?

13           A.     Yes.

14           Q.     Their reasons are somewhat vague, but the main  
15 thrust of their rationale appears to be they have zero  
16 interest in Bluetooth, and they do not appear to have  
17 confidence in Commil's ability to develop a Wi-Fi  
18 mobility management system.

19                   Do you see that?

20           A.     Yes, sir.

21           Q.     So is it fair to say that Mr. Miller was  
22 reporting back to the CEO and Mr. Dovev that Cisco was  
23 not interested in Commil's product, right?

24                   MR. WERNER: Your Honor, on optional  
25 completeness, can we have the next line read?

1                   MR. OSTROW: I'll read the next part of  
2 it, sure.

3           Q.     (By Mr. Ostrow) As they had no basis for  
4 coming to such a conclusion (i.e., they had not  
5 discussed Commil's Wi-Fi capabilities in detail). EM  
6 will discuss their reasons with them in more depth.  
7 Next Step: Get detailed feedback from Cisco executives  
8 as to their reasons for not continuing the discussions.

9                   Do you see that?

10          A.     Yes, sir.

11          Q.     Do you know anything else about the  
12 relationship between Cisco -- excuse me. Withdraw the  
13 question.

14                   Do you know anything else about the  
15 interactions between anybody on behalf of Commil and  
16 anybody on behalf of Cisco?

17          A.     In that point of time, no.

18          Q.     At this point of time. At any point in time?

19          A.     I remember that in some point of time, we had  
20 some -- we used the test lab in Israel for -- I think  
21 that they had voice over IP switch that one of our  
22 customers wanted us to use connecting to their system.

23                   So I have a vague memory that R&D was using  
24 their lab --

25          Q.     All right.

1           A.    -- but I don't remember the details.

2           Q.    But after this document, sir, do you have any  
3 reason to believe that Cisco changed their view and  
4 started that interest?

5           A.    I don't know.

6           Q.    Do you have any reason to doubt the conclusion  
7 in here that Cisco didn't have any confidence in  
8 Commil's ability to develop a Wi-Fi mobility management  
9 system?

10          A.    I cannot evaluate Cisco's conclusion. I can  
11 evaluate this Edgar conclusion.

12          Q.    This was his conclusion.

13          A.    If it's written, probably this is what he had  
14 in mind, but I have nothing to say about that.

15          Q.    This isn't a Cisco document; this is a Commil  
16 document, sir, right?

17          A.    Yes, sir.

18          Q.    So this is a Commil person reporting back to  
19 Commil that Cisco wasn't interested, right?

20          A.    Okay.

21          Q.    Is that right?

22          A.    Yes.

23          Q.    And, in fact, of the 30 companies --

24                   MR. OSTROW: We can take that down and go  
25 back to look at the whole document.



1           Q.     (By Mr. Ostrow) Of the 30 companies listed on  
2 this document, although there's some prospects up at the  
3 front and some noes at the very back, at the end of the  
4 day, none of these companies was willing to partner with  
5 Commil, were they?

6           A.     I guess not.

7           Q.     Sir, would it be fair to say that Commil spent  
8 about 20 person years specifically modifying the  
9 technology for its Wi-Fi project in 2004, 2005?

10          A.     20 man years?

11          Q.     Yes.

12          A.     I think that's a fair estimation for --  
13 besides the technology from Bluetooth that was  
14 applicable to Wi-Fi.

15          Q.     So that's on top of that.

16          A.     Yeah.

17          Q.     And had lots of employees. I don't know the  
18 exact number. I'm not sure you even know at this point,  
19 the exact number of employees working on Wi-Fi, but it  
20 had a bunch of employees working on Wi-Fi?

21          A.     Yes, sir.

22          Q.     And it spent millions of dollars on its Wi-Fi  
23 solution?

24          A.     Yes, sir.

25          Q.     And despite all that, Commil never got to a

1 proof of concept in the Wi-Fi product, did it?

2 A. I don't remember. I saw the documents, but I  
3 don't remember that personally.

4 Q. Do you have any reason to believe they did?

5 A. No. I don't remember one way or another.

6 Q. Do you recall during the meetings -- you  
7 testified about a minute ago about using the Cisco  
8 facilities in Israel.

9 A. Yes.

10 Q. Do you recall during those meetings if you  
11 talked about the patent?

12 A. In those meetings, I doubt it, but I don't  
13 know. Maybe introduction meeting or something.

14 Q. Sir, you stand to receive 6 percent of the  
15 proceeds in this litigation, right?

16 A. Yes, sir.

17 Q. When was the last time you saw Mr. Arazi?

18 A. Yesterday morning.

19 Q. Where was that?

20 A. In the hotel in Marshall.

21 Q. He came here to Texas?

22 A. Yes, sir.

23 Q. To help out with this trial?

24 A. Yes, sir.

25 Q. Where is he now?

1           A.     I don't know.

2           Q.     Do you know if he went back to Israel?

3           A.     I think so.

4                   MR. OSTROW:  I don't have anything else,  
5 Your Honor.

6                   THE COURT:  Okay.

7                   MR. WERBNER:  Your Honor, I have no  
8 questions.

9                   May the witness be excused?

10                  THE COURT:  Any objection?

11                  MR. OSTROW:  No, sir.

12                  THE COURT:  Okay.  You're finally  
13 excused.

14                  THE WITNESS:  Thank you very much.

15                  THE COURT:  You may step down.

16                  Who will be your next witness?

17                  MR. SAYLES:  May it please the Court.

18 Our next offer of proof will be some stipulations I  
19 would like to present to the jury, and I would  
20 respectfully request that the Court inform the jury of  
21 the effect and nature of stipulations.

22                  THE COURT:  Of course.

23                  Ladies and Gentlemen, what you're about  
24 to hear are what are called stipulations that are being  
25 offered to you.

1                    Oftentimes, in the course of -- of a  
2 lawsuit, the attorneys for both sides will get together  
3 and agree or stipulate as to the existence of certain  
4 facts. What that does is alleviate one side or the  
5 other from the -- the need to present to you evidence of  
6 those facts.

7                    In other words, the stipulations you're  
8 about to hear, the parties agree that these facts are  
9 true, and you are to accept the stipulations as true  
10 without hearing any further evidence as to these facts.

11                    That being said, you may present your  
12 stipulations.

13                    MR. SAYLES: All right. The parties  
14 agree the following facts are uncontested:

15                    1. Plaintiff Commil is a limited  
16 liability corporation organized under the laws of Texas  
17 and maintains its principal place of business at 10655 6  
18 Pines Drive, The Woodlands, Texas.

19                    Stipulation No. 4. Nitzan Arazi, Haim  
20 Barak, and Yaron Soffer filed provisional patent  
21 applications with the United States Patent & Trademark  
22 Office on April the 7th, 2000, and then again on June 1,  
23 2000, covering their inventions.

24                    No. 5. On February 12th, 2001, the named  
25 inventors, Nitzan Arazi, Haim Barak, and Yaron Soffer,

1 assigned the rights to their invention to Commil,  
2 Limited.

3           No. 6. On February 16th, 2001, the named  
4 inventors filed an application for the issuance of a  
5 patent on their invention, which was assigned  
6 No. 9,784,109.

7           No. 7. On November 15th of 2001, their  
8 application was published.

9           No. 8. On August the 6th, 2002, their  
10 inventions were issued a patent by the United States  
11 Patent & Trademark Office, the '395 patent.

12           No. 9. On March 18th, 2007, Commil, the  
13 Plaintiff, became the assignee of the '395 patent.

14           Those are the stipulations at this time.

15           And at this time, Your Honor, we would  
16 call, by way of deposition, an adverse witness, Bob  
17 O'Hara, who is a former Cisco employee.

18           After Cisco was acquired by Airespace, he  
19 was the Chief Technical Officer for Cisco. He is now  
20 retired from Cisco.

21           The total time is 26 minutes. The time  
22 is divided 24 minutes to the Plaintiff and 2 minutes to  
23 the Defense.

24           MR. FRAHN: Your Honor --

25           THE COURT: Yes.

1                   MR. FRAHN: -- a quick process problem we  
2 haven't been able to work out.

3                   THE COURT: Why don't you approach.

4                   MR. FRAHN: Thank you, Your Honor.

5                   (Bench conference.)

6                   MR. FRAHN: It's come to my attention  
7 that the Plaintiff has refused to play the clips in the  
8 order from the deposition. They want to play all of  
9 their clips and then play our counters separate.

10                  MR. SAYLES: I believe you're incorrect.

11                  MR. FRAHN: Well, I just got this note  
12 passed up that says: Plaintiff refuses to play the  
13 clips in chronological order.

14                  THE COURT: Well, we discussed that in  
15 chambers, Mr. Sayles.

16                  MR. FRAHN: I understand that the clips  
17 are not going from Page 1 to page end; is that correct?

18                  MR. STRACHAN: The clips are all of our  
19 designations. When they had optional completeness to  
20 fill in between the lines before or after the clip, we  
21 played that in order.

22                  They also had additional designations  
23 that weren't optional completeness. We put those at the  
24 end, because they were not a part of it. But anything  
25 they have that fills in the gaps, we're playing in those

1 gaps.

2 MR. SAYLES: That's what I thought.

3 MR. FRAHN: Okay.

4 MR. SAYLES: I thought we did it your  
5 way.

6 MR. FRAHN: All right. That's what I was  
7 told.

8 MS. HENSON: That's what I've been  
9 working on all weekend.

10 MR. FRAHN: Okay. Then let us roll.

11 THE COURT: Nothing for me to resolve?

12 MR. FRAHN: Thank you, Your Honor.

13 MR. SAYLES: Thank you, Your Honor.

14 (Bench conference concluded.)

15 THE COURT: All right. Ladies and  
16 Gentlemen, recall my prior instructions on deposition  
17 testimony. You're going to hear some at this time.

18 (Video playing.)

19 QUESTION: Would you please go to Tab 4  
20 and hand that document to the court reporter to be  
21 marked as Deposition Exhibit 118, and then you can get  
22 it back, and we'll talk about it.

23 On the third paragraph of it, it says:  
24 Airespace solved the centralized architecture dichotomy  
25 by creating a new design for 802.11 service delivery

1 called split MAC.

2 Do you see that?

3 ANSWER: Yes.

4 QUESTION: What was the thing that was  
5 being solved? It refers to solving the centralized  
6 architecture dichotomy.

7 ANSWER: So I believe that the statement  
8 there is referring to the previous paragraph where it  
9 described a problem where fresh information has to be  
10 constantly fed to the centralized devices managing the  
11 network, because that centralized device can't make  
12 accurate decisions without up to date, i.e., fresh  
13 information.

14 And that centralizing, that  
15 decision-making can adversely affect the performance of  
16 the system if that centralization is not done smartly,  
17 intelligently.

18 QUESTION: The next sentence where we  
19 were looking says, quote: This patent-pending  
20 architecture has revolutionized enterprise wireless  
21 networking by splitting the processing of 802.11  
22 protocol between two devices: The access point and a  
23 centralized WLAN switch or appliance.

24 Do you see that?

25 ANSWER: Yes.



1                   QUESTION: What do you know about that  
2 reference to patent-pending architecture, if anything?

3                   ANSWER: I don't know. I can't  
4 speculate.

5                   QUESTION: Okay. Here again, the  
6 centralized controller is referred to as a switch, isn't  
7 it?

8                   ANSWER: It appears so, yes.

9                   QUESTION: All right. Did you ever call  
10 it that during your work on the project?

11                  ANSWER: I'm sure that at some point,  
12 that I have referred to it as the wireless LAN switch,  
13 yes.

14                  QUESTION: Now, on the next page, the one  
15 ending in Bates stamp 23 and 24, the second column  
16 appears to explain why the functions were kept inside of  
17 the access point, doesn't it?

18                  ANSWER: That's -- that's how it appears,  
19 yes.

20                  QUESTION: And do many, if not all, of  
21 the explanations deal with time-sensitive or real-time  
22 operations?

23                  ANSWER: The -- the list has some  
24 functions that -- that have aspects related to time and  
25 others that do not.

1                   QUESTION: Then on the page ending with  
2 the Bates No. 24, just below this chart, it states,  
3 quote: All other functionality is handled in the WLAN  
4 switch, slash, appliance whereby time sensitivity is not  
5 a concern and system-wide visibility is required.

6                   Do you see that?

7                   ANSWER: I do.

8                   QUESTION: So doesn't that make clear in  
9 this Airespace document that what it's describing as  
10 patent-pending architecture is the splitting or  
11 divisions of the time-sensitive functions between the  
12 access point and the controller?

13                  ANSWER: So the -- the statement says  
14 what the statement says. It is not an accurate  
15 reflection of the architecture and the location of the  
16 functionalities.

17                  The next statement in the list below  
18 lists three functions that are also time critical and  
19 require very time-sensitive processing.

20                  There are other functions, including the  
21 completion of security handshake and setup of QOS  
22 parameters that take place --

23                  THE REPORTER: What parameters?

24                  ANSWER: QOS, quality of service,  
25 parameters that take place in the wireless LAN

1 controller that are also time-sensitive.

2                   And so the -- as I said, the statement  
3 isn't entirely correct.

4                   QUESTION: Do you know why this Airespace  
5 document states that all the other functionality, from  
6 what was listed in the access point, is handled in the  
7 switch, whereby the time sensitivity is not a concern?

8                   ANSWER: No, I don't know why.

9                   QUESTION: Let's start with Deposition  
10 Exhibit 119. Are you familiar with this document?

11                   ANSWER: No, I don't recognize the  
12 document.

13                   QUESTION: Let's look at the fifth  
14 paragraph on the first page of this document, which  
15 reads, quote: Splitting the MAC of the access point  
16 between access point and the wireless switch, slash,  
17 appliance allows timing-critical functions to remain in  
18 the access point while also enhancing security,  
19 manageability, and scalability.

20                   A split-MAC architecture closely mimics  
21 solutions that have been used by wireless carriers for  
22 years, end quote.

23                   Do you see that?

24                   ANSWER: Yes.

25                   QUESTION: Is that, as you read it,

1 inconsistent with what you have just said about whether  
2 the splitting has something to do with gaining the  
3 rapidness that you were seeking?

4                   ANSWER: So this -- this statement  
5 appears to be substantially similar to the one we were  
6 just discussing, and it doesn't accurately describe how  
7 the system was put together.

8                   QUESTION: But it is different from what  
9 you believe to be accurate?

10                   ANSWER: It is -- it is an incomplete  
11 description of our system and is inaccurate with respect  
12 to placement of time-critical functions.

13                   QUESTION: Do you know why it's contained  
14 in this document of Airespace?

15                   ANSWER: No, I do not.

16                   QUESTION: And you stated right after  
17 that in this Exhibit 122, quote: We accomplish this, in  
18 part, by separating the real-time aspects of the 802.11  
19 protocol from most of the management aspects of the  
20 protocol.

21                   In particular, the real-time frame  
22 exchange protocol and certain real-time portions of MAC  
23 management are accomplished in our lightweight access  
24 point, while the MAC management part of the protocol  
25 that relates to authentication, security, management,

1 and mobility are accomplished in our wireless LAN  
2 switch.

3 Do you see that?

4 ANSWER: Yes.

5 QUESTION: Is that an accurate statement?

6 ANSWER: That -- that statement's  
7 accurate in -- in what it says, but it's not a complete  
8 description of what the system does, and it's separate  
9 from the listing of the goals. It doesn't necessarily  
10 imply that one particular goal is accomplished by the  
11 real-time aspects in one place or another.

12 QUESTION: Well, is there something about  
13 that sentence that bothers you?

14 ANSWER: No.

15 QUESTION: Okay. So is that sentence  
16 that I just read that begins, quote, we accomplished  
17 this, then runs to the end of Paragraph 3, accurate?

18 ANSWER: So the -- the statement is -- is  
19 accurate as far as it goes, and it is an incomplete  
20 description of the accomplishment of the goals that are  
21 started earlier in the paragraph.

22 QUESTION: Don't you, in Paragraph No. 4  
23 of Exhibit 122, in the middle of May 2003, refer to the  
24 controller as a switch?

25 ANSWER: Yes. In Paragraph No. 4, the

1 controller is referred to as a switch.

2 QUESTION: In the last paragraph,  
3 Mr. O'Hara, of Exhibit 122, it states, quote: Splitting  
4 the MAC in the correct place enables the many functions  
5 described above that would be difficult or impossible to  
6 accomplish with a network full of standard APs.

7 Do you see that?

8 ANSWER: Yes.

9 QUESTION: Is that accurate?

10 ANSWER: Yes.

11 QUESTION: I understand in your last  
12 answer about the ethernet switch, but how about a  
13 wireless switch?

14 THE ATTORNEY: Objection, form.

15 ANSWER: So other than as a term, there  
16 really isn't a wireless switch. There's no equivalent  
17 functionality in the wireless LAN arena to the ethernet  
18 switch from which the original part of that name was  
19 derived.

20 QUESTION: Did you -- turning now to the  
21 PDF or the sort of presentation attached, did you write  
22 any portion of this?

23 ANSWER: Let's see. Let's see. When was  
24 this? I don't recall writing any of this, no.

25 QUESTION: Let's look at the page with

1 the Bates stamp 8249. And do you see the heading,  
2 Putting LWAPP to Use?

3 ANSWER: Yes.

4 QUESTION: It reads, quote: Airespace  
5 revolutionized the WLAN industry in 2002 when it first  
6 introduced the concept of a split MAC.

7 This refers to the ability to separate  
8 the real-time aspects of 802.11 protocol from most of  
9 the management aspects of the protocol, in particular,  
10 the real-time frame exchange protocol and certain  
11 real-time portions of MAC management are accomplished in  
12 a lightweight AP, and then it goes on.

13 Do you see that?

14 ANSWER: Yes.

15 QUESTION: Is that paragraph that we're  
16 looking at on this exhibit accurate?

17 THE ATTORNEY: Including the part you  
18 didn't read?

19 QUESTION: Yes.

20 ANSWER: So yes. It's -- it's generally  
21 an accurate description of -- of the system.

22 QUESTION: Exhibit 121 is not a marketing  
23 document, is it?

24 ANSWER: No. It appears to be an  
25 internal e-mail.

1                   QUESTION: And it appears to be one you  
2 wrote to the CEO of Airespace, correct?

3                   ANSWER: That's how it appears, yes.

4                   QUESTION: Assuming that it's not a  
5 forgery, why would you have written to the CEO at the  
6 end of April 2003 that the lightweight access point  
7 performs only time-critical portions of the 802.11  
8 protocol?

9                   ANSWER: So as it says at the top of the  
10 e-mail, this is a set of notes from a discussion. It's  
11 documentation, apparently, of a discussion that was  
12 held, and these notes are unattributed. I don't know  
13 who said that or why. It's simply a documentation of  
14 something that someone said.

15                   At -- let's see, at this time, after we  
16 had introduced our product, it was helping him to better  
17 understand the architecture and why we had done things  
18 the way that we did.

19                   QUESTION: This 122 e-mail you wrote to  
20 him is not a marketing document, is it?

21                   ANSWER: No, it is not.

22                   QUESTION: What was the purpose of it?

23                   ANSWER: So I -- from -- from the  
24 introduction there, that Steve had, apparently,  
25 requested of me to describe what split MAC was and why



1 we did what we did. I don't know what his purpose was  
2 in requesting it.

3 QUESTION: Isn't it true that one of the  
4 goals of splitting the MAC was to improve mobility in  
5 the LAN?

6 ANSWER: So the -- the statement in this  
7 e-mail says that of -- in order to accomplish specific  
8 goals. And improving the mobility of the wireless LAN  
9 is among that list. That was why Airespace split the  
10 MAC.

11 QUESTION: That's accurate then.

12 ANSWER: That's -- that's an accurate  
13 reflection of the statement, yes.

14 QUESTION: So one of the goals of this  
15 new system with the split MAC was to improve mobility in  
16 the network, correct?

17 ANSWER: Among -- among all the goals  
18 that I listed there in that statement, improving  
19 mobility is one of them.

20 QUESTION: And what was achieved with the  
21 Airespace system that was distributed and sold insofar  
22 as this seamless handoff, understanding what you mean by  
23 that term?

24 ANSWER: So the -- the Airespace system  
25 reacted rapidly the mobile device, essentially just

1 appearing randomly at some access point.

2           It was able to complete the association  
3 process, the security authentication process, and the  
4 establishment of quality-of-service parameters rapidly  
5 enough that the -- the data flow between the mobile  
6 station and the rest of the network was interrupted for  
7 a small enough period of time that there was no -- in  
8 our most stringent test, there was no audible artifact  
9 in, for example, a wireless LAN voice over IP  
10 communication.

11           QUESTION: Were you anticipating that it  
12 could be used as a system to support a voice over IP or  
13 over the internet? Yeah, IP, right?

14           ANSWER: The -- one of the -- one of the  
15 important applications of the wireless LAN system in a  
16 number of our potential customers was voice over IP.  
17 Many healthcare providers, for example, were using  
18 wireless LAN handsets for their internal communications.

19           QUESTION: But with the fat access  
20 points, as you went from one access point to the other,  
21 if you were using communications on a telephone, if it  
22 wasn't rapid, that would create a big problem, wouldn't  
23 it?

24           ANSWER: What happened with the fat --  
25 excuse me -- what happened with the fat access points

1 when a voice over IP handset would move from one access  
2 point to another would be that there was often -- not  
3 always but often an audible click or pop or gap in the  
4 communication. So the user of the phone was aware that  
5 something happened.

6                   And with our system, one of the  
7 requirements was that that not happen in our system.  
8 My -- my first -- excuse me -- my first discussions of  
9 what we wound up describing in our marketing literature,  
10 in our specifications as split MAC probably occurred  
11 very early after my joining Airespace. It was probably  
12 in mid to late September of 2001. But I don't know if  
13 those were the first discussions of those. They were my  
14 first discussions.

15                   QUESTION: The first sell was April of  
16 '03?

17                   ANSWER: Yes, I believe so.

18                   QUESTION: Before the development of this  
19 product, were there wireless LAN controllers being sold  
20 in the marketplace?

21                   ANSWER: I was not aware of any other  
22 wireless LAN controller being sold. And I believe ours  
23 was the first one introduced for sale.

24                   QUESTION: Cisco bought Airespace for  
25 approximately \$450 million; is that right?

1                   ANSWER: That's correct.

2                   QUESTION: And the only product that  
3 Airespace had and was selling at the time was this LWAPP  
4 system?

5                   ANSWER: So -- so the Airespace products  
6 consisted of the wireless LAN controller in several  
7 fashions and models, several different models of  
8 lightweight access points, the wireless LAN Airespace  
9 controller system, the management system, and a planning  
10 system, as well as all of the engineering personnel and  
11 knowledge in the company.

12                  QUESTION: Do you know what the  
13 Airespace -- the extent of their sales of those systems  
14 either by revenue or number of units?

15                  ANSWER: I believe, at that time, we were  
16 at approximately a rate of \$100 million annually.

17                  QUESTION: Do you recognize this  
18 document?

19                  ANSWER: No, I do not.

20                  QUESTION: Do you recognize the  
21 attachment entitled, Airespace Split-MAC Architecture?

22                  ANSWER: No, I don't.

23                  QUESTION: You'll notice under there is  
24 sort of a subtitle. It says: Using 802.11 Innovation  
25 to Improve LAN Performance, Mobility, and Security.

1 Do you see that?

2 ANSWER: Yes.

3 QUESTION: So a split-MAC effort to  
4 improve mobility is listed here as one of the three  
5 things in the subtitle?

6 ANSWER: The subtitle does list improving  
7 mobility among the three -- three other aspects -- or  
8 three aspects that are improved.

9 QUESTION: Do you agree that improving  
10 mobility was one of the important features of the  
11 split-MAC architecture?

12 ANSWER: So the improvement of mobility  
13 was a necessity, a requirement for our system. The  
14 mobility, as it existed prior to the introduction of our  
15 system, was inadequate to meet the needs of our  
16 customers.

17 QUESTION: In what way?

18 ANSWER: In that it was both too slow and  
19 was unable to span multiple subnets. The addressing of  
20 the mobile devices was not handled properly and required  
21 a tremendous amount of time to update if a device moved  
22 from one subnet to another.

23 QUESTION: But also if it was functioning  
24 as voice over, WLAN, right?

25 ANSWER: In any case, the -- the -- the

1 movement from one point in the network to another was  
2 required to be improved.

3 QUESTION: Wasn't it recognized from the  
4 very beginning of your development on what became the  
5 lightweight access point project that it should be able  
6 to support voice over the LAN?

7 ANSWER: The voice -- voice over IP on  
8 the wireless LAN was an important application that we  
9 were required to support with our system.

10 QUESTION: Why were you required?

11 ANSWER: Because the customers --  
12 potential customers were using that voice over IP over  
13 wireless LAN or intending to use it and would not have  
14 purchased a system that did not support it.

15 QUESTION: And is that something you knew  
16 from the beginning of the work, or at what point did  
17 that knowledge come to you and the others developing the  
18 system?

19 ANSWER: That was -- that was something  
20 that we suspected early on and was confirmed in some of  
21 our early discussions with potential customers while we  
22 were still seeking funding.

23 QUESTION: Was there any problems  
24 encountered in being able to accomplish that?

25 ANSWER: So problems that -- yeah. There

1 were innumerable problems encountered in trying to  
2 develop the system so that it would support the voice  
3 over IP protocol throughout a campus-wide wireless LAN  
4 system.

5 QUESTION: And were any of them solved by  
6 determining where to place certain functions of the  
7 802.11 protocol as between the switch and the access  
8 point?

9 ANSWER: The -- so were any of the  
10 problems solved with respect to the support of voice  
11 over IP in a campus-wide wireless LAN by the placement  
12 of functions between the access point and wireless LAN  
13 controller? Yes.

14 By centralizing a number of functions at  
15 the wireless LAN controller where the data existed to  
16 allow those functions to execute most quickly, we were  
17 able to solve a great number -- potentially almost all  
18 of the functions -- or all of the problems with voice  
19 over wireless LAN support.

20 (End of video clip.)

21 THE COURT: Does that complete the offer?

22 MR. SAYLES: Yes, it does, Your Honor.

23 THE COURT: All right. Thank you.

24 We're going to take our morning recess at  
25 this time.

1                   Ladies and Gentlemen, take 20 minutes.

2 Be back ready to come in the courtroom at 10:35.

3                   Remember my prior instructions, and don't  
4 talk about the case.

5                   LAW CLERK: All rise.

6                   (Jury out.)

7                   THE COURT: All right. Y'all have a  
8 seat.

9                   All right. Mr. Strachan?

10                  MR. STRACHAN: Yes, Your Honor.

11                  THE COURT: You have some --

12                  MR. STRACHAN: I'm getting it right now.

13                  THE COURT: -- prospective exhibits for  
14 me?

15                  MR. STRACHAN: May I approach, Your  
16 Honor?

17                  THE COURT: Yes. We had a conversation  
18 in chambers this morning concerning the process for  
19 laying a foundation for the summaries of these license  
20 agreements. And what I indicated was that my thought  
21 had been to have the Plaintiff lay a foundation in front  
22 of the jury and then offer the exhibits at that time.

23                  I've got time over lunch, if you'd like a  
24 hearing outside the presence of the jury, and I'm -- I'm  
25 happy to give it to you, if that's what you want.



1                   MR. STRACHAN: Your Honor, what I've  
2 handed you is the exhibit notebook for this damage  
3 witness. Tab 5 is the actual license and summaries that  
4 will be the subject of the discussion.

5                   What -- I would, I think, Your Honor,  
6 like to have a hearing outside the presence of the jury  
7 so that we don't have to stop during the jury  
8 presentation and get a ruling on each of these.

9                   THE COURT: All right. Well,  
10 Mr. Carroll, do you have someone who can be available  
11 over the noon hour?

12                  MR. CARROLL: Well, unfortunately, it  
13 will be me, Judge, but yes.

14                  THE COURT: Well, you'll do. You'll do.

15                  MR. CARROLL: Thank you.

16                  THE COURT: I've got a criminal matter  
17 over the noon hour as well, but do you have witnesses or  
18 proffers that you can make up until the noon hour?

19                  MR. STRACHAN: Oh, yes, sir.

20                  THE COURT: Okay. I just -- I didn't  
21 know when you were planning to call your damage expert.

22                  MR. STRACHAN: We have some additional  
23 video depositions and a fact witness, and then we'll  
24 call Mr. Carlile.

25                  THE COURT: All right. Well --

1 MR. WERNER: We're going to call  
2 Jonathan David before that. So Mr. Carlile will be  
3 after lunch, I'm sure.

4 THE COURT: Okay. Okay. Well, let's do  
5 it about 12:15. I'll try to do the initial appearance  
6 at noon, and we'll -- I'll break the jury until 1:30,  
7 and that will give you a chance to --

8 MR. CARROLL: May I ask a question?  
9 The summaries, is that the same that's in his expert  
10 report?

11 MR. STRACHAN: Yes. But I have a copy  
12 for you as well.

13 MR. CARROLL: Oh, you do? Okay. Thank  
14 you.

15 THE COURT: Okay.

16 MR. SAYLES: May it please the Court.

17 THE COURT: Yes.

18 MR. SAYLES: One other thing.

19 We have our list of exhibits, which the  
20 other side has reviewed and approved, and rather than  
21 adding exhibits, it was mostly a removal of exhibits  
22 that would relate to Aruba.

23 So with the Court's permission, we'll  
24 turn in our updated list for today.

25 THE COURT: All right. That will be

1 fine.

2 Any objection?

3 MR. OSTROW: No, Your Honor.

4 THE COURT: All right. Those that are  
5 reflected as being admitted are admitted, and those that  
6 have been removed from the record as relating to Aruba  
7 will be removed.

8 Anything more from the Plaintiff?

9 MR. SAYLES: Nothing more from the  
10 Plaintiff at this time.

11 MR. OSTROW: Your Honor, I've just been  
12 informed that somebody on our team has not seen this who  
13 should have it.

14 Can we just come back, Your Honor, after  
15 the break and take a look at it? Will that be all  
16 right?

17 THE COURT: That will be fine.

18 MR. OSTROW: All right. Thank you.

19 THE COURT: Let Mr. Warriner know.

20 MR. OSTROW: Yes. Yes, sir.

21 THE COURT: They're admitted subject to  
22 you reviewing them and having a problem with them.

23 MR. OSTROW: Thank you.

24 LAW CLERK: All rise.

25 (Recess.)

1 (Jury in.)

2 THE COURT: Please be seated.

3 Who will be your next witness?

4 MR. SAYLES: May it please the Court.

5 At this time, the Plaintiff calls Pat  
6 Calhoun by deposition and as an adverse witness. He  
7 appeared at deposition, and as is true of all these  
8 depositions, was duly sworn; lawyers for both sides  
9 appeared.

10 Mr. Calhoun is a Cisco employee. He was  
11 a founder of Airespace. When Cisco acquired Airespace,  
12 he became the Chief Technical Officer at Cisco.

13 And this is 24 minutes, 20 minutes to the  
14 Plaintiff and 4 to the Defendant.

15 THE COURT: All right. Thank you.

16 (Video playing.)

17 QUESTION: When was Airespace acquired by  
18 Cisco?

19 ANSWER: I believe it was in March 2005,  
20 is when the acquisition closed.

21 QUESTION: And at that time, you became  
22 an employee of Cisco, what was your position?

23 ANSWER: I was Chief Technology Officer.

24 QUESTION: For what division?

25 ANSWER: For the Wireless Networking

1 Business Unit.

2 QUESTION: Okay. Well, when did you --  
3 were you involved -- well, let me start over with --  
4 what is Black Storm Network?

5 ANSWER: When we started the company, the  
6 startup, which eventually became Airespace, the original  
7 name was Black Storm Networks. Sometime in late 2002,  
8 early 2003 -- I can't quite recall the date -- we hired  
9 our marketing leader, VP of Marketing.

10 One of the objectives that that  
11 individual had was to also provide a name -- you know,  
12 provide a name that he felt was more appropriate for  
13 what it was that we were doing, and came up with the  
14 name Airespace.

15 QUESTION: What was it in the 802.11 that  
16 would determine what must remain in the access point?

17 ANSWER: There are some time-sensitive  
18 functions that exist in 802.11 that -- there's some  
19 timing requirements in the 802.11 protocol that must be  
20 met. And those typically occur in -- for the purpose  
21 for -- for the purposes of acknowledging packets,  
22 retransmitting packets.

23 So those are the -- those are the two  
24 pieces that -- I'm sure there is a couple more that I  
25 can't think of off the top of my head, but those are the

1 two key ones that we needed to make sure that we could  
2 comply with. That required us to be as close to the  
3 device as possible.

4                   When I say the device, I mean the mobile  
5 station as possible.

6                   QUESTION: Did Black Storm/Airespace ever  
7 come up with a solution to the 802.11 problem as you've  
8 described it?

9                   ANSWER: Yes, we did.

10                  QUESTION: Okay. And what was that  
11 solution called?

12                  ANSWER: It was the wireless LAN  
13 controller architecture, the one that has the AC and the  
14 WTP.

15                  QUESTION: And did you have any name that  
16 you called that solution?

17                  ANSWER: I don't think we actually had a  
18 formal name for the solution. And we referred to them  
19 as a wireless controller and an access point, a  
20 lightweight access point.

21                  QUESTION: Okay.

22                  ANSWER: I think a lot of the industry  
23 referred to it as the LWAPP architecture. I think the  
24 LWAPP architecture just implied the fact that there was  
25 a wireless controller in it and a lightweight access

1 point.

2 QUESTION: The last part of that  
3 paragraph says increasing the performance to real-time  
4 services. What are real-time services?

5 ANSWER: Yeah. In this case here, the  
6 voice and video.

7 QUESTION: And how are they real-time  
8 services?

9 ANSWER: Real-time, as I think I  
10 mentioned earlier, is really this strange term that  
11 nobody can really seem to define. But the industry does  
12 generally refer to voice and video as having more  
13 time-sensitive requirements. I think that that's what  
14 that was implying.

15 QUESTION: In the split AP architecture,  
16 there is a division of what was previously performed --  
17 the 802.11 MAC performed at the access point, the WTP?

18 ANSWER: The -- that is correct. And I  
19 think we've gone through this a couple times, right.  
20 The intent was things that needed to exist in hardware  
21 that were time-sensitives needed to remain in the WTP.  
22 Everything else would basically go up to the access  
23 controller. That's what this diagram is trying to  
24 represent, is that the architectures used lofty words  
25 but weren't very specific on -- on what that really

1 meant from an implementation standpoint.

2           This document is trying to say, we need  
3 to go clarify what that means.

4           QUESTION: And my question is -- I think  
5 it's simple, really. And that is simply, on the split  
6 AP side, the items associated with the AC have  
7 non-real-time and the items associated with WTP have  
8 real-time?

9           ANSWER: In the split AP. In the split  
10 AP case you're talking about, yes.

11           So in this case here, the time-critical  
12 functions are showing at the bottom, and the  
13 non-time-critical functions in the split AP case are  
14 showing to be in the access controller.

15           QUESTION: Okay. Let's turn to that.  
16 The third paragraph of that document, the second  
17 sentence reads: In the patent-pending architecture --  
18 well, let's start over with the first sentence in that  
19 paragraph.

20           Airespace solved the above dichotomy by  
21 creating a new architecture for 802.11 service delivery  
22 called split MAC.

23           At the risk of being repetitive, could  
24 you tell me what was the new architecture?

25           ANSWER: I think as we -- we talked about



1 this morning, there was the legacy traditional access  
2 802.11 architect, right, where an access point was an  
3 autonomous unit. We also called that autonomous access  
4 points. And then there was the unified wireless. This  
5 is the unified wireless architecture.

6 QUESTION: Then the second sentence goes  
7 on to read that this patent-pending architecture has  
8 revolutionized enterprise wireless networking by  
9 splitting the processing of the 802.11 protocol between  
10 two devices, the access point.

11 And I'll stop right there. At various  
12 times in our discussion, we've also referred to that as  
13 WPT, correct?

14 ANSWER: WTP.

15 QUESTION: In our discussions earlier  
16 today, the WTP in your references would be the same as  
17 the access point, correct?

18 ANSWER: In this document, yes.

19 QUESTION: Yes. Okay. And then it  
20 says -- continuing to read: And a centralized WLAN  
21 controller, parenthesis, i.e., WLAN switch or appliance.  
22 And that centralized WLAN controller, i.e., switch or  
23 appliance, would be the access controller that we've  
24 discussed this morning?

25 ANSWER: That's correct.

1                   QUESTION: This particular paragraph --  
2 we'll just read it. The Airespace wireless enterprise  
3 platform --

4                   ANSWER: The paragraph, okay.

5                   QUESTION: -- tackles this problem head  
6 on by splitting the process of 802.11 data and  
7 management protocols as well as the access point  
8 functionality between AP -- we talked about that -- and  
9 the WLAN switch or controller.

10                  I've read it correctly so far, haven't I?

11                  ANSWER: Uh-huh.

12                  QUESTION: Okay. Then it says the AP  
13 handles the portions of the protocol that have real-time  
14 requirements, which includes, and then it lists nine --

15                  ANSWER: Yes.

16                  QUESTION: -- portions of the protocol?

17                  ANSWER: Yeah.

18                  QUESTION: Okay. And it uses this phrase  
19 again, real-time, that we've seen earlier this morning,  
20 correct?

21                  THE COURT: Right.

22                  QUESTION: Okay. Now, you've said before  
23 that real-time is a phrase that can have a lot of  
24 different meanings and contexts. In this context, these  
25 nine different portions of the protocol, what does the

1 term real-time mean?

2                   ANSWER: I actually don't know, because  
3 some of these itemized items actually have nothing to do  
4 with time criticality. Remember we were talking about  
5 some are, and then there's things that are just on the  
6 chip, such as No. 9. Encryption, as we discussed this  
7 morning, doesn't really have a real-time requirement.

8                   So I find sort of the opening statement  
9 to be very confusing. But 1 through 5 would be the  
10 functions that, as we discussed this morning, have time  
11 sensitivity that are generally handled by hardware.

12                  QUESTION: The following paragraph begins  
13 with: All remaining functionality is handled in the  
14 WLAN switch or appliance, whereby time sensitivity is  
15 not a concern and system-wide visibility is required.

16                  Did I read that correctly?

17                  ANSWER: Uh-huh.

18                  QUESTION: Okay. And in that context,  
19 time sensitivity would just be the opposite of real-time  
20 requirements, time sensitivity?

21                  ANSWER: Sure.

22                  QUESTION: Do all of the 2000 series --  
23 whether it's 2000 or 2100, do all of the 2000 series  
24 incorporate Cisco controllers, incorporate the LWAPP  
25 architecture we've discussed earlier?

1                   ANSWER: Yes, they do.

2                   QUESTION: Okay. What about the 3750  
3 series, WLAN controller?

4                   ANSWER: Yes. That would be an  
5 integrated ethernet switch with a wireless controller.

6                   QUESTION: Does it incorporate the LWAPP  
7 architecture we discussed?

8                   ANSWER: Yes, it does.

9                   QUESTION: Okay. 4400 series, WLAN  
10 controller?

11                   ANSWER: That's the Cisco naming for the  
12 4000 series that we talked about earlier.

13                   QUESTION: And it incorporates the LWAPP?

14                   ANSWER: It incorporates the LWAPP.

15                   QUESTION: Okay. 6500 series, wireless  
16 service module?

17                   ANSWER: That's the same as the one we  
18 talked about earlier, the catalyst 6500.

19                   QUESTION: 7500 series would be the same?

20                   ANSWER: 7500?

21                   QUESTION: Is the 7500 series a wireless  
22 service module?

23                   ANSWER: All right. Yes, that would also  
24 include LWAPP.

25                   QUESTION: 1000 series?

1                   ANSWER:   Yes.

2                   QUESTION:  And does it incorporate the  
3 LWAPP?

4                   ANSWER:   Yes.

5                   QUESTION:  1100 series?

6                   ANSWER:   Yes.

7                   QUESTION:  It incorporates LWAPP?

8                   ANSWER:   Yes.

9                   QUESTION:  1130 AG series?

10                  ANSWER:   Yes.

11                  QUESTION:  Incorporates an LWAPP?

12                  ANSWER:   Yes.

13                  QUESTION:  1200?

14                  ANSWER:   Yes.

15                  QUESTION:  Incorporates LWAPP?

16                  ANSWER:   Yes.

17                  QUESTION:  1230?

18                  ANSWER:   Yes.

19                  QUESTION:  Incorporates LWAPP?

20                  ANSWER:   Yes.

21                  QUESTION:  1240 AG?

22                  ANSWER:   Yes.

23                  QUESTION:  Incorporates LWAPP?

24                  ANSWER:   Yes.

25                  QUESTION:  1250 series?

1                   ANSWER:   Yes.

2                   QUESTION:  Incorporates LWAPP?

3                   ANSWER:   Yes.

4                   QUESTION:  1300 series?

5                   ANSWER:   Is there -- is there -- are you  
6 going to say 1500 next?

7                   QUESTION:  You got it.

8                   ANSWER:   What is the 1300?  I'm going to  
9 have to say I don't know.

10                  QUESTION:  1500 series?

11                  ANSWER:   Yes.

12                  QUESTION:  And does it incorporate LWAPP?

13                  ANSWER:   Yes.  I wasn't sure if I had 13  
14 and 1500 mixed up there.

15                  QUESTION:  I'm going to have the court  
16 reporter hand you what's been marked as Deposition  
17 Exhibit No. 4.

18                  ANSWER:   Yep.

19                  QUESTION:  And it's entitled, Changing  
20 the Game for WLANs:  Airespace's Breakthrough Split MAC  
21 Architecture.

22                               But regardless of whether you agree with  
23 the proposition or not, this document sets forth that  
24 the access point is handling the portions of the  
25 protocol or MAC management services that have real-time

1 requirements, and then it lists what those functions  
2 are.

3                   Whether you agree that they are real-time  
4 or not real-time, that's how this table presents it?

5                   ANSWER: The table certainly says that.

6                   QUESTION: And if you go to Page 2, we're  
7 seeing the same language that we've been noting  
8 throughout these documents, starting with what is the  
9 third photograph that says split MAC WLAN systems tackle  
10 this problem head on by splitting the processing of  
11 802.11 data and management protocols as well as the  
12 access point functionality between the AP and the WLAN  
13 switch or controller.

14                   ANSWER: Right.

15                   QUESTION: And it goes on to say: In the  
16 split MAC approach, the access point handles the  
17 portions of the protocol that have real-time  
18 requirements as shown in Table 1.

19                   ANSWER: Well, that's what the document  
20 says.

21                   QUESTION: Right.

22                   ANSWER: But it doesn't change, you know,  
23 my earlier testimony that that's not the way we  
24 implemented the system.

25                   QUESTION: And it goes on to say: All

1 other functionality is handled in the WLAN  
2 switch/appliance whereby time sensitivity is not a  
3 concern and system-wide visibility is required.

4           In -- in terms of showing the differences  
5 as they were set forth in Deposition Exhibit No. 1, your  
6 PowerPoint which is now Deposition Exhibit No. 8, shows  
7 the architectural table on Page 3. And it shows again  
8 the left column is the local AP; the right-hand column  
9 is the split AP; and the difference is really in where  
10 the MAC -- the various MAC management functions reside  
11 in the infrastructure, correct?

12           ANSWER: That is correct.

13           QUESTION: And this table reflects that  
14 the split AP has 802.11 non-real-time MAC functions or  
15 management services in the controller and then 802.11  
16 real-time MAC management services or functions in the  
17 access point, correct?

18           ANSWER: You know, this is a copy of this  
19 slide, right? This is not the way I would draw it, but  
20 this is the way that this -- this -- this Exhibit 1  
21 actually defines those two.

22           QUESTION: But this was a presentation  
23 that you prepared for a --

24           ANSWER: Correct.

25           QUESTION: -- presumably an oral



1 presentation that you were giving to an IETF group?

2 ANSWER: Correct. And I was trying to  
3 point out that this document has problems.

4 QUESTION: Well, you're pointing that out  
5 now, but where in this -- well, yeah, the problem being  
6 that the local MAC and the split MAC could be unified?

7 ANSWER: Exactly, yeah. So I basically  
8 pulled it and I said, look, we've got two different ways  
9 of doing things. Let's not go down this path, because  
10 we're going to be imposing a huge tax on all the  
11 implementers or all the vendors to have to do two  
12 different things.

13 So I was basically saying if we would  
14 unify it, we could have a common way of implementing  
15 local MAC and split MAC.

16 QUESTION: You've been handed what's been  
17 marked as Deposition Exhibit No. 9.

18 ANSWER: Uh-huh.

19 QUESTION: Is that document familiar to  
20 you?

21 ANSWER: No, it's not, but I don't --  
22 clearly, it's a Cisco document.

23 QUESTION: Okay. And it's entitled Cisco  
24 Unified Wireless Network WLAN Controller Deployment  
25 Guide?

1                   ANSWER: Uh-huh. Yeah.

2                   QUESTION: The term Cisco Unified  
3 Wireless Network, what does the unified wireless network  
4 cover?

5                   ANSWER: The controller, the access  
6 points, our management system.

7                   QUESTION: Then if you go down to the  
8 next paragraph, it says: Once joined with controller,  
9 the APs are also lightweight in the sense that they  
10 handle a subset of the 802.11 MAC functionality.

11                  ANSWER: That is correct.

12                  QUESTION: Is that indicative of the fact  
13 that these APs are part of a split MAC architecture?

14                  ANSWER: That is correct.

15                  QUESTION: The next sentence says:  
16 Typically, this subset -- presumably of 802.11 MAC  
17 functionality -- includes only real-time processing.  
18 This architecture enables support for seamless mobility  
19 and a number of advanced features in an elegant,  
20 scalable way.

21                  So, once again, we have in a Cisco  
22 document an indication that typically, the split of  
23 802.11 MAC functionality in the split MAC architecture  
24 is among real-time or time-sensitive criteria.

25                  ANSWER: I see what the document is

1 reading, right. I happen to know what the code does.

2 I'm simply telling you what the code does.

3 QUESTION: But that's not what this  
4 document represents. Well, it says typically.

5 ANSWER: Right. Yeah. Right.

6 QUESTION: In Cisco's 500 series express  
7 mobility light access point product, does that use the  
8 split MAC architecture we've been discussing?

9 ANSWER: So my understanding is every one  
10 of our access points supports both split and local. The  
11 500 is the one that I'm not sure about, to be honest.  
12 It was designed for the mid-market. That one I would  
13 have to go back and take a look. That's the one that  
14 I'm a little unsure of. All the other ones support  
15 both.

16 QUESTION: Okay. How about the Cisco  
17 controller 500 series wireless mobility express?

18 ANSWER: Yeah. All of those controllers  
19 run basically the same code, so they would support both.  
20 The only one I'm unsure of is the 500 access point. I  
21 believe it runs both, but I'm not...

22 QUESTION: Cisco products -- so it is  
23 fair to say that the accused products are based on a  
24 centralized architecture?

25 ANSWER: We support both, right.

1                   QUESTION: And in essence, isn't it fair  
2 to say that part and parcel of the reason that you  
3 developed split MAC architecture was to improve  
4 performance of the system?

5                   ANSWER: No. No. The -- the original  
6 intent of the split MAC architecture was to -- was to  
7 simplify the manageability, the operational experience,  
8 and the deployability of the solution.

9                   So in the old days when autonomous is all  
10 that existed, when customers deployed them, every one of  
11 the access points had to be managed individually. So if  
12 you had a thousand of those, you had to manage a  
13 thousand individual devices in your network, which was a  
14 huge burden.

15                  The intent was from a manageability  
16 standpoint, if we can centralize the manageability to  
17 the controller, we provide fewer devices that the IT  
18 staff has to touch, and, therefore, it reduces the  
19 operational costs and the complexity.

20                  QUESTION: But from a manageability  
21 long-term, cost-effective benefit analysis, the  
22 preferred usage appears to be this split MAC  
23 architecture?

24                  ANSWER: That is correct.

25                  QUESTION: Does the content packet name,

1 whether it's an MSDU or PDU, change based on whether  
2 it's a voice application, a video application, or just  
3 plain data application?

4                   ANSWER: Actually, that's a weird  
5 question. I'm not sure that I get it. And I'll tell  
6 you why.

7                   We actually don't care what the packet  
8 is, right? A packet is a packet. If there's voice in  
9 it, okay. If there's data in it, that's fine. As far  
10 as we're concerned, everything is data.

11                   QUESTION: Right. Correct.

12                   ANSWER: There's no differentiation.

13                   QUESTION: Part of the whole quality of  
14 service value-added functionality has been to somehow  
15 tag voice packets so that they could be recognized as  
16 such and queued it higher in the transmission line;  
17 isn't that true?

18                   ANSWER: So an end point would know if  
19 it's actually going to be creating a voice --

20                   QUESTION: Right.

21                   ANSWER: -- call, and at that point, it  
22 may decide to make use of the 802.11e and actually tell  
23 the network, by the way, I'm going to be sending certain  
24 packets, and I'm planning on prioritizing them  
25 differently. We actually don't know whether it's voice

1 or not. For all we know, you know, it could be a  
2 request to prioritize web traffic.

3 QUESTION: Does Cisco have any products  
4 that are telephone handsets that can be used for voice  
5 over IP?

6 ANSWER: Okay. So voice over IP mobile  
7 devices, yes. We do have 7920, 7921, 7925 voice over IP  
8 wireless phones, yes.

9 QUESTION: And those phones still have to  
10 operate using the same basic core 802.11 MAC functions  
11 that a laptop would?

12 ANSWER: Exactly.

13 QUESTION: It may have additional  
14 functionality, but it has to at least have that?

15 ANSWER: At a minimum, yes.

16 QUESTION: I think you mentioned earlier  
17 there was a phone headset, the Cisco 79?

18 ANSWER: 7920.

19 QUESTION: 7920.

20 ANSWER: We don't actually make that one  
21 anymore, but the 7921 and the 7925 is our wireless voice  
22 over IP devices.

23 QUESTION: Now, can those be used on a  
24 Cisco unified wireless network or using these accused  
25 products, the controllers or --

1                   ANSWER: It's 802.11, so it should be  
2 able to interoperate with anything.

3                   (End of video clip.)

4                   THE COURT: Does that complete the offer?

5                   MR. SAYLES: It does, Your Honor.

6                   THE COURT: You may call your next  
7 witness.

8                   MR. SAYLES: May it please the Court.

9                   At this time, the Plaintiff calls Robert  
10 Friday by video deposition as an adverse witness. He is  
11 a Cisco employee. He was a founder and chief scientist  
12 at Airespace.

13                   The time is a total of 12 minutes; 10  
14 minutes to the Plaintiff and 2 minutes to the Defense.

15                   THE COURT: Thank you Mr. Sayles.

16                   (Video playing.)

17                   QUESTION: Was the wireless solution that  
18 Airespace developed and sold intended to support not  
19 only data communications but voice communications?

20                   ANSWER: Yes, it was.

21                   QUESTION: How did the desire to have it  
22 support voice communications impact the architecture  
23 design of the system, if any?

24                   ANSWER: So the major issue back at the  
25 time was basically layer three mobility. So the issue

1 was how to handle layer three mobility when you move  
2 between these subnets to minimize the time between  
3 those -- between that transition.

4 QUESTION: Did that have something to do  
5 with supporting voice communication?

6 ANSWER: In the sense that the user  
7 experience -- you did not want the user experience to  
8 experience clicks or, you know, transitions, dropouts,  
9 when you move between these subnets.

10 QUESTION: Well, you do know that one of  
11 the goals of the Airespace product was to support and  
12 allow, with cellular-like handoff, voice over internet  
13 communications, right?

14 ANSWER: The major problem back in the  
15 time was this layer three mobility issue and how to  
16 handle handoffs across these layer three subnets. So in  
17 that context, that was trying to provide that cellular  
18 experience -- experience across these subnets.

19 QUESTION: And the old architecture that  
20 involved the fat access points didn't accomplish that,  
21 and the product by Airespace did; is that right?

22 ANSWER: So the -- what the -- the fat  
23 access point did not solve this layer three mobility  
24 problem.

25 QUESTION: The lack of layer three



1 mobility in the old fat access point systems?

2           ANSWER: So what -- by not supporting  
3 layer three mobility is -- in the old fat access system,  
4 you cannot -- you had to reconnect as you moved between  
5 these subnets, or you had to get a new IP address.

6           QUESTION: And so why did Airespace want  
7 to solve that layer three mobility problem? So that you  
8 wouldn't have to reconnect?

9           ANSWER: Yes. So the -- yeah. So on the  
10 layer three, the problem that was being solved is so you  
11 didn't have to get a new IP address when you crossed the  
12 subnet.

13           QUESTION: Because if you did, it would  
14 disrupt the communication?

15           ANSWER: Getting a new IP address took a  
16 period of time and disrupted communications.

17           QUESTION: So the solution with that  
18 mobility problem was to design a system that could do it  
19 faster?

20           ANSWER: Yes.

21           QUESTION: Were you involved in any way  
22 in that endeavor while you were at Airespace?

23           ANSWER: I was involved directly in that  
24 endeavor. That was not my area of focus.

25           QUESTION: I mean, just before the break,

1 you were telling me that in the fat access point system,  
2 because of a level three mobility problem, you would  
3 have a disconnection or an interruption as someone, some  
4 client, or mobile device moved from one access point to  
5 the other, right?

6 ANSWER: Yes. So as a client moves from  
7 these subnets to a new subnet, they have to get a new IP  
8 address.

9 QUESTION: And that would cause a  
10 disconnection?

11 ANSWER: That would cause an interruption  
12 in a communication.

13 QUESTION: But in the Airespace system,  
14 that was not the case?

15 ANSWER: In the Airespace system, that  
16 was not the case.

17 QUESTION: After Cisco acquired  
18 Airespace, they were selling this wireless solution,  
19 correct?

20 ANSWER: After the acquisition, it became  
21 a Cisco product.

22 QUESTION: But it was the same product  
23 initially as what you participated in developing at  
24 Airespace, correct?

25 ANSWER: Yes. It was the -- Cisco

1 acquired -- they sold the same product.

2 QUESTION: Do you know if the layer three  
3 mobility problem was solved at all in the system sold by  
4 Airespace?

5 ANSWER: Yes. We solved the layer three  
6 mobility problem.

7 QUESTION: How do you know that?

8 ANSWER: Because I know I can take a  
9 client from one subnet to the next subnet and not -- and  
10 not have to get a new IP address.

11 QUESTION: And not lose the connection?

12 ANSWER: Not lose the connection.

13 THE ATTORNEY: Objection, form.

14 QUESTION: So -- but you have really no  
15 information on how that was accomplished.

16 ANSWER: Not -- no specific information.  
17 That was not my --

18 QUESTION: Well, no specific  
19 information --

20 ANSWER: The answer is, no, I have no  
21 information on how that was actually accomplished.

22 Well, I will assume it's correct.

23 QUESTION: Do you have Deposition  
24 Exhibit 131 before you, Mr. Friday?

25 ANSWER: Yes, I do.

1                   QUESTION: Is this a true and correct  
2 copy of an e-mail that you sent to Pat Calhoun and Bob  
3 O'Hara on or about January 1, 2002?

4                   At the top of the next page, it says  
5 Black Storm's architecture based on 802.11 signalling  
6 also provides 10 millisecond handoffs.

7                   What does that mean?

8                   ANSWER: Well -- so I do not know what  
9 that meant in the context of this e-mail.

10                  In the context of the industry, it either  
11 meant two things: One is it's inheriting the 802.11  
12 functionality, handoff functionality, or layer three  
13 mobility.

14                  QUESTION: But what is the reference to  
15 10 millisecond handoffs?

16                  ANSWER: The answer is I don't remember.

17                  QUESTION: What did you mean by the  
18 phrase, quote, cellular-type handoffs, end quote?

19                  ANSWER: Yeah. So in the context of this  
20 e-mail, I don't -- I don't remember what I meant.

21                  In the context of the industry at the  
22 time, it meant providing a cellular -- you know, a user  
23 experience similar to a cellular experience.

24                  QUESTION: What was that?

25                  ANSWER: Was no clicks.

1                   QUESTION: And you wanted to have that as  
2 a user moved from one access point to the other?

3                   ANSWER: We wanted to have the user  
4 experience -- when the user moved from one access point  
5 across subnets, they have the same user experience as a  
6 cellular user.

7                   QUESTION: Certainly, you didn't want to  
8 have a product at Airespace that created clicks or gaps  
9 as a client moved from one access point to the other,  
10 correct?

11                  ANSWER: Correct.

12                  QUESTION: And certain steps needed to be  
13 taken in the design of the architecture to accomplish  
14 that, correct?

15                  ANSWER: Well, I mean, so the problem  
16 that was trying to be solved at the time was this layer  
17 three mobility problem. You know, the specific design  
18 issues were not in my -- how would I say -- not in my  
19 wheelhouse, but that was the problem trying to be  
20 solved.

21                  QUESTION: Well, just taking what you  
22 wrote, do you have any gripe or hesitation to -- with  
23 respect to the words, quote, a new architecture that  
24 moves complexity out of the access point back into the  
25 network?

1                   ANSWER: No. I would say, you know, back  
2 in the context of what we were trying to do in terms of  
3 moving these management functions back in the  
4 controller, I mean, that -- that is the context in which  
5 I would give you this e-mail.

6                   QUESTION: So you stand behind that  
7 phrase, quote, a new architecture that moves complexity  
8 out of the access point back into the network?

9                   ANSWER: Yeah.

10                  QUESTION: Yes or no?

11                  ANSWER: I stand behind what we were  
12 trying to accomplish back then, moving management  
13 functions from the access point back to the controller.

14                  QUESTION: I'm asking you this sentence  
15 here, in your e-mail in Exhibit 132, do you stand behind  
16 that as accurate within the context of what you were  
17 writing, quote, a new architecture that moves complexity  
18 out of the access point back into the network?

19                  ANSWER: I mean, my point is, I don't  
20 remember writing this e-mail, and I don't remember the  
21 context specifically about this e-mail. I'm trying to  
22 help you with the context of what was happening back at  
23 that timeframe in January.

24                  QUESTION: Well, I'm just trying to find  
25 out if there's something about this sentence in

1 Exhibit 132 that you feel is inaccurate or misleading.

2 Is there?

3 ANSWER: What I'm trying to say is I  
4 don't remember.

5 QUESTION: Well, you don't know sitting  
6 here today, if there's anything misleading or inaccurate  
7 in the sentence that appears in 132, quote, a new  
8 architecture that moves complexity out of the access  
9 point back into the network?

10 ANSWER: I don't remember in the context  
11 of this e-mail.

12 QUESTION: Well, point out to me in that  
13 sentence anything that you currently think is  
14 inaccurate.

15 ANSWER: I don't remember in the context  
16 of this e-mail.

17 QUESTION: So you're unable to point to  
18 any inaccuracy in that sentence at this time?

19 ANSWER: Well, I don't remember in the  
20 context of this e-mail. So in the context of January  
21 timeframe, immediately after we had split the company  
22 up, we had basically started to go out and develop new  
23 concepts to raise money again. Very early in the  
24 timeframe.

25 So that's the context in which this

1 e-mail was written, the timeframe in which it was  
2 written. You know, the focus at that time was around  
3 moving management functions from these access points  
4 back into the controllers.

5 QUESTION: Irrespective of the e-mail --  
6 forget the e-mail -- in January of '02, would it be  
7 accurate to say that the system that Black Storm was  
8 going to develop and sell was one that contained a new  
9 architecture? Yes or no?

10 ANSWER: So this is not a yes/no  
11 answer -- question. So the answer is I don't remember.

12 QUESTION: Mr. Friday, do you have  
13 Deposition Exhibit 133 in front of you?

14 ANSWER: Yes, I do.

15 QUESTION: It purports to be an e-mail  
16 from you to Matt Barletta dealing with -- under the  
17 subject split MAC. Do you have any reason to doubt this  
18 is a true and correct copy of an e-mail that you sent to  
19 Mr. Barletta on May 11, 2003?

20 ANSWER: No, I do not.

21 QUESTION: You begin addressing Matt  
22 Barletta by saying, quote: Here are my first thoughts  
23 on split MAC and the reasons we did it. I will keep  
24 adding this evening. I have thoughts or suggestions,  
25 let me know.



1 I guess if you had thoughts probably is  
2 what you meant there; is that correct?

3 ANSWER: Yes.

4 QUESTION: Why were you putting down in  
5 May of 2003 your thoughts on split MAC and the reasons  
6 that you did it, or along with others?

7 ANSWER: I do not remember.

8 QUESTION: Well, it doesn't say the  
9 time-critical functions must be in the radio because  
10 they're in the chip. It says the time-critical  
11 functions need to be in the radio, right?

12 ANSWER: That's what it says.

13 (End of video clip.)

14 MR. SAYLES: That concludes the tender of  
15 this deposition, Your Honor.

16 THE COURT: All right. Who will be your  
17 next witness?

18 MR. SAYLES: May it please the Court.  
19 At this time, the Plaintiff calls Jonathan David.

20 THE COURT: All right. Mr. David was  
21 previously sworn, correct?

22 MR. SAYLES: Yes, he was.

23 THE COURT: Mr. David, come around,  
24 please.

25 Try to talk into the microphone and keep

1 your voice up for me.

2 THE WITNESS: Yes, sir.

3 MR. SAYLES: May it please the Court.

4 THE COURT: Mr. Sayles.

5 JONATHAN DAVID, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

6 DIRECT EXAMINATION

7 BY MR. SAYLES:

8 Q. Mr. David, the jury has heard about you, but  
9 they haven't heard from you, so let's -- let's start.

10 Tell us your name and where you live.

11 A. My name is Jonathan David, and I currently  
12 live in Israel.

13 Q. And do you have a home in Houston?

14 A. No.

15 Q. Do you have an office in Houston?

16 A. Yes, in The Woodlands, The Woodlands, Texas,  
17 which is outside of Houston.

18 Q. Where did you grow up?

19 A. I grew up -- well, I was born in London,  
20 England, moved to the United States at age seven, lived  
21 for two years in Tucson, Arizona, and then lived in  
22 Beaumont, Texas, for five years and then Houston, Texas,  
23 up through high school graduation.

24 And then I went to University of Texas, did a  
25 bachelor's degree in accounting and a law degree at the

1 University of Texas.

2 Q. And when did you receive your law degree?

3 A. 1990.

4 Q. After receiving your law degree, would you  
5 tell the ladies and gentlemen of the jury what your work  
6 was?

7 A. Yes. Straight out of law school, I went to  
8 work for a firm in Dallas called Baron & Budd, and they  
9 primarily represent working people who have been exposed  
10 to asbestos on the job. And that was primarily who I  
11 was representing for the two years that I worked for  
12 Baron & Budd.

13 Q. So when was that two years?

14 A. That was 1990 to 1992.

15 Q. And so that was your first job out of law  
16 school as a beginning lawyer?

17 A. Yes, it was.

18 Q. And after you left Baron & Budd, what did you  
19 do next?

20 A. I moved back to Houston and opened up my own  
21 law firm and began to represent basically the same kind  
22 of -- same kind of folks, the same kind of cases.  
23 Represented actually a lot of building trades people,  
24 like pipefitters, boilermakers, carpenters, maintenance  
25 workers.

1           And a little bit later on started representing  
2 a lot of steel workers. Eventually was designated by  
3 District 12 of the Steel Workers Union, which District  
4 12 is the Southwestern United States, Texas, Oklahoma,  
5 and pretty much everything southwest through California  
6 and even on to Hawaii.

7           So I don't remember how many states, 9 or 11,  
8 13 states, something like that. But I -- we were  
9 representing the steel workers on any kind of dust  
10 diseases, whether it be asbestos-type diseases, like  
11 mesothelioma, which is a cancer that, unfortunately, is  
12 hundred-percent fatal disease; asbestosis, and, of  
13 course, with the steel workers, also silicosis, which is  
14 a disease of the lung that they get from breathing in  
15 dust at the foundries and other -- other steel  
16 facilities.

17           I actually had a lot of clients up here from  
18 Lone Star Steel and other places.

19           And so pretty much the whole way through  
20 continue -- we continue today to represent people with  
21 mesothelioma or -- and/or their families and get them  
22 recoveries for -- for their -- for this condition.

23           Q.    Is your law firm still in operation?

24           A.    Yes, it is.

25           Q.    And so in summary, you have been, through your

1 career, a plaintiff's injury lawyer as you've described  
2 it?

3 A. I absolutely have, and if I may say so, I'm  
4 proud to be one, so...

5 Q. Now, you live in Israel now?

6 A. Yes, sir.

7 Q. Are you a United States citizen?

8 A. I am.

9 Q. Are you a citizen of Israel?

10 A. No.

11 Q. Would you tell the ladies and gentlemen of the  
12 jury just in brief fashion how it is you came to live in  
13 Israel?

14 A. Well, actually, my mother was born in the old  
15 city of Jerusalem, and she is Israeli, and so I always  
16 had visited there. I have relatives over there. And  
17 then I married an Israeli. So I have four children ages  
18 sixteen down to six. And we ended up moving there about  
19 six years ago.

20 And I actually have a project over there where  
21 I represent about 600 families who were victims of  
22 terrorism, and we, through legal channels, were pursuing  
23 the banks that have been financing the terrorists. So  
24 that's a project I have going on over there.

25 Q. All right. Now, let's get right down to

1 business here.

2           How did you become aware of the '395 patent?

3           A.    Right. Well, as I mentioned, I have relatives  
4 over there. One of my relatives, who I guess he's  
5 either a second or a third cousin -- I'm not sure  
6 which -- his grandfather and my grandfather were  
7 brothers.

8           But he is involved with -- he's like a lawyer  
9 and also an MBA, a master's in business, and he has a  
10 niche where the lenders and the banks will call him in  
11 whenever a high-tech company is having trouble and maybe  
12 getting ready to go under, which is actually quite a  
13 common thing.

14           With -- with a high-tech industry being as  
15 prevalent as it is over there, you have a lot of  
16 high-tech start-ups with great technology, but a lot of  
17 them are failing for all kinds of reasons: Financing,  
18 marketing, management, the timing. And so a lot of them  
19 are going under but still -- but not because of their  
20 technology.

21           They've got great technology, but they're  
22 going under for, you know, any number of those kinds of  
23 reasons. And he'll get called in by the lender, because  
24 the lender will foreclose on the intellectual property,  
25 on the patents, of a failing company. If they've lent

1 money to a company and the company fails, the company's  
2 had to put up its patents as collateral. So the lender  
3 will come in and foreclose on those patents, and then  
4 Ari, my second cousin, they'll call him in to see if he  
5 can sell off that intellectual property, those patents.

6 Q. All right. So he called you about Commil  
7 Limited?

8 A. Yes. He -- he called me up about this  
9 particular one and said there's something here I think  
10 you need to look at, because evidently this particular  
11 patent he thought was really -- had some potential. And  
12 so he set up a meeting.

13 I came to meet him and Mr. Yuval Dovev, who  
14 was the Chief Executive Officer of Commil, after  
15 Mr. Soffer who was here this morning, and we met at a  
16 cafe and he began to tell me the Commil story. But more  
17 importantly, tell me about these patents. And he told  
18 me that he --

19 MR. CARROLL: Excuse me, Your Honor. I'm  
20 going to object to what he was told.

21 MR. SAYLES: I'll stop him from the  
22 narrative.

23 THE COURT: Sustain the objection,  
24 Mr. Sayles.

25 Q. (By Mr. Sayles) Mr. David, let's just take

1 this in little steps, all right?

2 A. All right.

3 Q. All right. After being introduced to the  
4 availability of this patent by your cousin, were you  
5 interested?

6 A. Yes. I was very intrigued, because I  
7 understood that -- that the folks at Commil believed  
8 that this patent was being infringed and that there was  
9 a lot of licensing opportunities out there for this  
10 patent.

11 Q. All right. Now, did you have the background,  
12 training, education, or experience to evaluate this  
13 patent yourself?

14 A. No, no, and no.

15 Q. Had you ever been involved in the patent world  
16 in your -- in your life?

17 A. No, I had not.

18 Q. And did you have any education going back to  
19 college where you got your degree -- was it accounting?

20 A. No, sir. I did not have any science  
21 background, never -- never was much good at science,  
22 but -- but I did -- I did form an impression that these  
23 people really believed in this patent, and so that led  
24 me to say I want to check into this.

25 Q. All right.



1           A.    I want to have this evaluated.

2           Q.    All right.  You've told us that you didn't  
3 have the ability to do it.  Now, I don't want you to get  
4 into what was said, but did you retain others to help  
5 you evaluate this?

6           A.    Yes, I did.  I hired some -- really, a team  
7 here in Texas of the best people that I could find and  
8 spent some considerable amount of my own money just  
9 checking into this patent.

10          Q.    Is that called -- sometimes called due  
11 diligence when you're looking at a business opportunity?

12          A.    Yes.

13          Q.    And a common way to say it would be it's doing  
14 your homework.

15          A.    Doing your homework.

16                So, basically, there was a team consisting of  
17 a firm -- a law firm that does nothing but prosecute  
18 patents with the U.S. Patent Office.  And they, I  
19 believe, were the first people to take a look at it, and  
20 they -- they, basically --

21          Q.    Now, I'm going to stop you right there.  I  
22 don't want you to go into what they said.

23          A.    All right.

24          Q.    Are you with me?

25          A.    I'm with you.

1           Q.    All right. So you had a law firm that  
2 specializes in patent prosecution evaluate it from that  
3 standpoint?

4           A.    Yes. Yes. They --

5           Q.    And whom else did you have help on this team?

6           A.    There was also, I believe, a university  
7 engineering professor, who I think, you know, did things  
8 like reverse engineering these products and figuring out  
9 how -- you know, how they work, looking at source code  
10 and things of that nature.

11                    So -- so there was -- there was also a --  
12 there was also a -- what I understood was one of the  
13 biggest experts on patent licensing who had done  
14 licensing negotiations with -- with Japan on some -- on  
15 some very important products.

16                    So there was a whole team turning this thing  
17 upside down doing -- doing searches just to make sure  
18 that the U.S. Patent Office -- you know, really just --  
19 just looking at it upside down.

20           Q.    All right. So that's what you did.

21                    About how long did you spend doing your  
22 homework before you bought this patent?

23           A.    I don't remember exactly, but I think it was,  
24 you know, months.

25           Q.    And did you have to spend some money to pay

1 these persons even before you were able to make a  
2 decision?

3 A. Yes. I don't remember the exact amount, but I  
4 believe that it was over a hundred thousand dollars that  
5 I spent just checking this patent out before I ever  
6 thought about actually buying it.

7 Q. All right. Now, Mr. David, we all know that  
8 you did indeed buy it. So at a point in time, did you  
9 decide to make the purchase?

10 A. Yes, I did.

11 Q. All right. Now, I don't want to go into  
12 detail about the purchase, but, ultimately, what was the  
13 basic term of the purchase? Did you get it all?

14 A. No. The -- the terms were that it was  
15 \$400,000 in cash upfront, and then I also had to give  
16 them a 10-percent back-end.

17 It was a little more complicated than that  
18 because it was like a step -- it was like 10 percent of  
19 the amounts over 10 million and then like 5 percent  
20 between 5 and 10 million and so on, something like that.  
21 So -- so it was -- but, generally, I was referring to it  
22 as a 10-percent back-end.

23 Q. And with whom were you dealing at the time you  
24 were making the acquisition of the patent rights?

25 A. I was dealing with this venture capital fund

1 that the jury heard about earlier where Mr. -- or it was  
2 put up on the screen. These were the people who funded  
3 and financed Commil and later foreclosed on their  
4 patent.

5           And they were basically trying to get this  
6 thing off the books because -- it was like a distress  
7 sale, like, you know, when their business -- their  
8 business is investing in companies, and when those fail,  
9 they want to get -- you know, foreclose, get the assets  
10 off the books before they get caught up in bankruptcy  
11 and stuff and move on.

12           And so it was -- that was the -- that was the  
13 context.

14           Q. All right. And it was mentioned by Mr. Soffer  
15 this morning that the inventors retained an interest.

16           Would you explain that, please?

17           A. Yes, sir.

18           After the 10-percent back-end that the venture  
19 capital fund kept, then you're left with 90 -- I'm left  
20 with 90 percent. And then out of that 90 percent, of  
21 course, there's, you know, fees and expenses and so on.  
22 And then the inventors get their 18 percent.

23           And then out of -- you know, whatever's left  
24 out of that, there's actually a number of my family  
25 members that I've assigned shares to, my kids, my

1 parents, that kind of thing.

2           And so I don't -- getting down to the net, I'm  
3 not sure, you know, what all that calculates out to at  
4 this point.

5           Q.    All right. And are you an officer of Commil  
6 USA, the Plaintiff in this case?

7           A.    Yes, I am. I believe I'm the executive  
8 officer.

9           Q.    And was -- I think this is a stipulated fact,  
10 but I want to cover it just briefly with you.

11                  After the '395 was acquired, was it indeed  
12 assigned to Commil USA, the Plaintiff in this case?

13           A.    Yes, sir.

14           Q.    All right. Now, I want you to tell the ladies  
15 and gentlemen of the jury why it is that you bought this  
16 patent. What was the purpose?

17           A.    Well, basically, to enforce it.

18           Q.    And what can you do with a patent?

19           A.    Enforce it and make sure that -- that if  
20 anybody is infringing it, that they pay the royalty  
21 that -- that it's entitled to.

22           Q.    And let's just be straight up here. Does  
23 Commil USA have any other business other than the  
24 enforcement of this patent?

25           A.    No, sir.

1           Q.    Why didn't you just leave it up to Commil,  
2 Limited, over in Israel to enforce their patent rights?

3           A.    Well, of course, Commil, Limited, didn't --  
4 didn't own the patent anymore. It got foreclosed by the  
5 venture capital fund.

6                   And those kinds of funds, they have a  
7 corporate charter or a mandate. Their mandate is to  
8 invest in companies, and if those companies fail, they  
9 foreclose and sell off what's left.

10                   And they -- they manage -- invest in a bunch  
11 of companies. They are not involved in analyzing  
12 intellectual property and seeing if there's infringement  
13 and going to other countries and spending money on  
14 lawyers and engineers and all that kind of stuff.  
15 That's not the business they're in.

16                   So they -- they just -- they were interested  
17 in selling it off. And, you know, I did -- I did the  
18 homework and -- and figured out that this thing was  
19 really extremely valuable and, you know, bought it.

20           Q.    All right. Now, I just have a final question  
21 or two that I want to ask you.

22                   In this case, after you acquired the patent,  
23 the next thing that happened was a lawsuit was filed  
24 against Cisco for patent infringement.

25           A.    Yes.

1           Q.    Why is it that you didn't go knock on the door  
2 at Cisco and say:  Let's sit down and talk about a  
3 license?

4           A.    Well, there's actually legal or -- or a legal  
5 procedural reason for that, and that is, in these kinds  
6 of cases, typically, what happens is, if you go and  
7 approach Cisco and tell them, hey, you guys are  
8 infringing my patent, the first thing that will often  
9 happen is Cisco will actually immediately sue you on  
10 what's called a declaratory action in their own  
11 backyard.

12                   And we really, you know, wanted to -- to be  
13 the ones deciding where and when, and so we wanted to  
14 proceed here in Texas, and that's the reason that we  
15 acted first.

16           Q.    All right.  Now, Mr. David, you're a lawyer,  
17 but you're not a patent lawyer, right?

18           A.    That is correct.

19           Q.    But you know how court proceedings are  
20 conducted.  I'm going to pass the witness now, and I  
21 want you to respond to whatever questions they have for  
22 you.

23                   Will you do that, sir?

24           A.    Yes, sir.

25                   THE COURT:  Cross-examination.

1 MR. CARROLL: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. CARROLL:

4 Q. Mr. David, I guess I'm confused about who sold  
5 you the patent. Did Commil sell you the patent, or did  
6 some bank sell you the patent?

7 A. Well, neither one. It was a venture capital  
8 fund.

9 Q. But the assignment of the patent came from  
10 Commil, didn't it?

11 A. That's a good question. I'm not sure, you  
12 know.

13 Q. Well, see, here's what's confusing to me, I  
14 guess. You told the jury that Commil, the company, kept  
15 a 10-percent piece of any money you got, correct?

16 A. It was -- it was the -- it's the venture  
17 capital fund. They may have done this through -- I  
18 guess they must have done this formally through the  
19 Commil entity because they owned it at this point.

20 Q. Okay. Because, I mean, we all read in the  
21 paper or have read in the paper about the -- about the  
22 subprime housing mess and everybody getting foreclosed  
23 on from their houses.

24 When that happens, the folks who bought the  
25 house no longer own it, correct?



1           A.     Correct.

2           Q.     And they don't have anything to sell, correct?

3           A.     That's right.

4           Q.     And they don't have any back-end to reserve,  
5 correct?

6           A.     That's correct.

7           Q.     So what I'm trying to understand is, did you  
8 buy this patent from the bank and then give Commil,  
9 Limited, a back-end, even though they didn't own  
10 anything to sell you, or did somehow you buy it from  
11 Commil, Limited?

12          A.     Well, the negotiations were done with the  
13 venture capital fund who held all the rights to Commil,  
14 the company, and the access.

15                 So, evidently, now that you bring it up, it  
16 looks like the formal transaction that they did with me  
17 was through Commil, Ltd, which they owned. But they  
18 were -- they're really the ones, you know, calling the  
19 shots and owning it.

20          Q.     So -- so the bank, I guess, your cousin or  
21 somebody your cousin partnered with --

22                   MR. CARROLL:  Is -- is Mr. Soffer still  
23 here?

24                   MR. WERBNER:  No, sir.

25                   MR. CARROLL:  He's gone?

1                   MR. WERBNER:   Yes, sir.

2           Q.    (By Mr. Carroll) So the bank and your cousin  
3 foreclosed on poor old Mr. Soffer and his company, and  
4 he was out, right?

5           A.    No. No, sir. My cousin --

6           Q.    Oh, not your cousin.

7           A.    My cousin was the broker hired by the venture  
8 capital fund.

9           Q.    I gotcha. I gotcha. He was the one the bank  
10 hired to go and unload foreclosed on property from  
11 people who couldn't pay their mortgage, right?

12          A.    Well, it wasn't a bank. It was a venture  
13 capital fund.

14          Q.    Same thing.

15          A.    I don't think so, but...

16          Q.    Somebody -- somebody loaned this company  
17 money, this bunch of Israeli investors, and they pledged  
18 their company and their patent and everything else, and  
19 for whatever reason, they failed, and then somebody  
20 foreclosed on them, and your cousin got the heads up on  
21 it and called you and said: I've got a heck of a fire  
22 sale for you.

23                   Is that what happened?

24          A.    Well, there were other bidders in the process.

25          Q.    Oh, I don't doubt that, but up to the point

1 that you said other bidders, your cousin called you and  
2 said: I've got a heck of a deal for you, because we've  
3 just foreclosed on somebody that has some assets,  
4 correct?

5 A. Well, he said: Come take a look at this. It  
6 looks interesting.

7 Q. Okay. But -- but the first part of my  
8 question is true. He said: We foreclosed on people who  
9 have got good assets. I've got first dibs on them.  
10 Come look at them.

11 That's what happened.

12 A. Well, he didn't say: We foreclosed. He  
13 said --

14 Q. Or the bank.

15 A. He was hired by the venture capital fund.

16 Q. Okay. You don't want to -- you don't want to  
17 link your cousin up to that kind of activity, right?

18 A. I think I did link him up to it.

19 Q. Okay. I mean, you've heard -- you've heard in  
20 this whole -- whole subprime mortgage catastrophe, these  
21 people they call bottom-feeders who swim around on the  
22 bottom buying people's houses that they got kicked out  
23 of for next to nothing.

24 Is that what your cousin does?

25 A. No, sir. My cousin is a broker for

1 intellectual property.

2 Q. I gotcha. All right.

3 Now, one of the things that -- that -- or  
4 another thing I guess that I'm confused about is the  
5 18 -- let's see.

6 MR. CARROLL: Do we have a clipboard? I  
7 bet we do. Do you reckon we can bring it right over  
8 here?

9 Q. (By Mr. Carroll) Mr. David, can you see the  
10 clipboard?

11 A. Yes, sir.

12 Q. You're a trial lawyer, right? Just like me.

13 A. I'm not as good as you.

14 Q. Well, you're not as old as me, but thank you  
15 for the compliment.

16 I mean, and one of the things that we do is we  
17 try to figure stuff out that typically is over our  
18 heads; isn't that true?

19 A. Oftentimes, yes, sir.

20 Q. I mean, about every time, right?

21 I mean, you didn't know anything about small  
22 cell carcinoma before you got going as a plaintiff's  
23 lawyer, did you?

24 A. No, I didn't.

25 Q. Because I didn't either.

1           Okay. So here's what I'm trying to figure  
2 out, and you help me. I bet you can.

3           Let's -- I'm just going to put this down as  
4 the deal. I'm going to move this over a tad so  
5 everybody can see it.

6           The first thing that happens is 10 percent  
7 goes back to the lender, right, whoever that is, venture  
8 capital --

9           A. Venture capital fund, yes, sir.

10          Q. Okay. But I mean, they're the ones that held  
11 the mortgage, right?

12          A. I wouldn't call it a mortgage, but I think  
13 you've got the right idea.

14          Q. Something like a mortgage.

15          A. Yes, sir.

16          Q. Okay. And then you gave 18 points to the  
17 inventors, correct?

18          A. Yes. Although I think that comes off -- that  
19 that's out of the net. So there's -- you know, there's  
20 lots of fees and expenses that we haven't talked about.

21          Q. Oh, I'm sure that's so.

22          A. Yes, sir.

23          Q. But -- but the inventors get six points  
24 apiece, right?

25          A. Yes. Of the net, yes.

1 Q. Of the net.

2 But they didn't have anything to sell, did  
3 they?

4 A. Have anything to sell?

5 Q. Yeah. They didn't own the patent, did they?

6 A. Well, they didn't own it at the time, but I  
7 wanted them to get a stake back into it since they  
8 invented it.

9 Q. Well, they didn't even actually own it before  
10 the company went bust and the bank foreclosed, because  
11 Mr. Soffer told us that they assigned it to the little  
12 company for a dollar apiece.

13 Don't you remember that from yesterday?

14 A. Yeah, but they were owners of the company.

15 Q. I see.

16 So you -- this is something you did just out  
17 of the kindness of your heart?

18 A. Well, I mean, they also had to burden  
19 themselves a lot with -- with this lawsuit, so I  
20 wouldn't say it was totally out of the kindness of my  
21 heart, but I did feel that they deserved a stake in --  
22 in -- in what they invented themselves, and they had  
23 lost that stake.

24 Q. As a matter of fact, you needed them to help  
25 you prosecute this lawsuit, didn't you?

1           A.     Well, they have -- they have certainly acted  
2 as consultants, as has already been mentioned by  
3 Mr. Soffer, yes.

4           Q.     And as a matter of fact, these two deals, the  
5 10-point deal with the bank and the 18-point deal with  
6 the inventors, didn't happen at the same time, did they?

7           A.     No, they did not.

8           Q.     As a matter of fact, when you paid the bank  
9 your 400,000 bucks and gave them a 10-percent back-end,  
10 that was before you sued Cisco, wasn't it?

11          A.     Yes, it was.

12          Q.     And when you sued Cisco and realized what was  
13 required to prove what you claim, that's when you gave  
14 the inventors their 18 points; isn't that true?

15          A.     Well, we certainly needed their cooperation to  
16 help with this effort, yes.

17          Q.     So my question -- the answer to my question  
18 is, yes, the 18 points got assigned to the inventors  
19 after you pulled the trigger on Cisco.

20          A.     Yes.

21          Q.     And then you told them that you'd pay them --  
22 I guess all three of them got the hundred dollars an  
23 hour deal that Mr. Soffer described?

24          A.     They all were under that deal. I don't know  
25 if they've all -- how much they've all, you know, billed

1 on it or...

2 Q. Well, were -- were some of the -- of the three  
3 inventors more -- I guess important might not be the  
4 right word, but more involved than others in -- in  
5 preparing what the jury's heard thus far?

6 A. I actually don't know how much involvement  
7 each one has had versus the others.

8 Q. And we know Mr. Soffer came to town and  
9 testified, correct?

10 A. That's correct.

11 Q. And Mr. Soffer told the jury this morning that  
12 Mr. Arazi at least made it as far as the hotel here in  
13 Marshall, didn't he?

14 A. Yes, he did.

15 Q. And I'm going to put his name down here,  
16 because I don't think the jury has seen it spelled out.  
17 Maybe they have.

18 His name is the very first name on the patent,  
19 isn't it?

20 A. It may be.

21 Q. You haven't looked at it? Oh, come on.

22 A. I mean, I heard -- I heard your colleague say  
23 it yesterday.

24 Q. Okay. Have you read your own patent?

25 A. I certainly have not.



1           Q.    You really haven't.  You -- you're not even  
2 curious?

3           A.    For me, it's all Greek.

4           Q.    Well, you reckon -- you reckon the jury is  
5 going to think any different, and they've got to read  
6 the goofy thing.

7                   Is that fair?

8           A.    I guess that's their job, and -- and I -- you  
9 know, they've also got experts here that have testified  
10 to help them with it, just like with me.  I'm not -- I  
11 had experts help me with it.

12          Q.    So you're -- you're a lot like me.  When  
13 you -- when you bought that patent from the bank, you  
14 didn't know the difference between Wi-Fi and hi-fi, did  
15 you?

16          A.    That's absolutely correct.

17          Q.    Have you ever rigged up a Bluetooth?  Are you  
18 one of these people that walk around with the thing in  
19 your ear?

20          A.    I think I have one in my car.  I think I have  
21 a Bluetooth in my car.

22          Q.    And are you like one of our jurors talked  
23 about on Monday; you had to get your daughter or your  
24 son to hook it up?

25          A.    I am one of those, yes.

1 Q. Yeah. Because they're hard to hook up, aren't  
2 they?

3 A. Probably so.

4 Q. Okay. Now, Mr. Arazi hit the road for Israel  
5 this morning, didn't he?

6 A. I think he might have left yesterday.

7 Q. Okay. Do you know that you told us he was a  
8 will call; that you all would bring him to trial?

9 A. You know, that you'd have to ask the lawyers  
10 about who all was --

11 Q. Okay. I mean, you understand --

12 A. I guess he was here, you know, if needed for  
13 that purpose, but...

14 Q. Well, y'all didn't tell us you cut him loose  
15 to go home, did you?

16 A. Well, you have to talk with the lawyers about  
17 that.

18 Q. I'm just asking what you know.

19 A. I don't know.

20 Q. Well, did you eat dinner with him? Did you  
21 talk to him? Did you say hi to him?

22 A. I had dinner at Bodacious Barbecue with him.

23 Q. I bet not pork.

24 A. That's correct.

25 Q. Okay. So did you know that your side promised

1 us that you would let us have a crack at him live in  
2 front of this jury so that we could find out the truth  
3 behind whether your -- the little company, Commil, ever  
4 could make a Wi-Fi device out of that patent?

5 Did you know that?

6 A. Well, I imagine we wouldn't have flown him  
7 over here if we were hiding him for something, but I  
8 don't know --

9 Q. Well, why did -- why did you send him home  
10 before we got a crack at him, before the jury could hear  
11 whether it's true or not true that your company -- the  
12 little company you bought the patent from couldn't build  
13 a Wi-Fi device from their own idea?

14 A. Sir, I would think that's something that you'd  
15 need to take up with the lawyers.

16 Q. I'm taking it up with you. You're the guy  
17 filing the lawsuit. Why did you send him home?

18 A. I didn't send him home.

19 Q. Well, let me ask you this: You've been in  
20 this courtroom every day that I have and every day that  
21 these folks have been in here.

22 And wouldn't you agree -- knowing as little as  
23 you know about the technology, not having read the  
24 patent, having heard what you heard, wouldn't you agree  
25 that the 64-dollar question in this lawsuit, the one the

1 jury is going to have to decide before you get to the  
2 pay window, is whether your patent, the one you bought  
3 from the bank, covers Wi-Fi?

4           Wouldn't you agree with that?

5           MR. SAYLES: Excuse me, Your Honor. This  
6 goes way beyond the direct examination, and it's  
7 argumentative, and I object to it.

8           THE COURT: I sustain the objection.

9           Q. (By Mr. Carroll) All right. Would you  
10 agree -- wouldn't you agree that that is, in fact, the  
11 64-dollar question?

12          A. Could you repeat it? I'm sorry.

13          Q. Yeah.

14           Wouldn't you agree, having heard everything  
15 you've heard, that the 64-dollar question that everybody  
16 thus far has talked about -- by my count there have been  
17 three -- you're the third live witness and three or four  
18 folks on depositions -- is whether the patent that you  
19 bought at foreclosure from the bank covers Wi-Fi?

20          A. I believe that there's no question about that,  
21 yes, sir.

22          Q. That -- that that's the question that these  
23 folks are going to have to decide.

24          A. I also believe that's the answer.

25          Q. Oh, I know you believe that, because it -- you

1 get paid pretty big if that is the answer, correct?

2 A. That's correct.

3 Q. Okay. And wouldn't you agree that the person  
4 in the little company, the name -- the first named  
5 inventor, Mr. Arazi, has been identified by Mr. Soffer,  
6 the other named inventor, as being the person who knew  
7 the most about his company's efforts to make Wi-Fi work  
8 off that patent that you bought?

9 You heard that testimony, didn't you?

10 A. I don't know -- I don't know that I heard  
11 that -- no, I don't -- I don't know that I heard that  
12 exactly.

13 Q. Okay. So --

14 A. Possibly.

15 Q. -- my question to you is, you had your --  
16 Mr. Arazi listed as a witness you were going to call and  
17 told us you were going to make him available live so the  
18 jury could decide what, if anything, to believe that he  
19 said, and we relied on that.

20 We don't have one deposition clip to play for  
21 the jury designated, and you didn't tell us anything --

22 THE COURT: Well, Mr. Carroll, let's get  
23 to the question instead of argument.

24 MR. CARROLL: I'm sorry, Your Honor.

25 A. Well, again, I think that your question is

1 something for the lawyers, not for me.

2 I know that y'all already took Mr. Arazi's  
3 deposition, so I don't know exactly -- it was our choice  
4 whether to, you know, bring him to testify. We brought  
5 him here thinking we might and ended up choosing to --  
6 you know, that he might not add all that much and wanted  
7 to save time here.

8 But you -- you've taken his deposition and  
9 asked him all the questions you want, and I don't -- I  
10 don't think you listed him as a witness you wanted to  
11 call. So I don't know why you're asking me all these  
12 questions.

13 Q. (By Mr. Carroll) Well, I'll ask you this last  
14 one, and I'll ask you some other questions.

15 If, in fact, it's true that you told us about  
16 a week ago that you would, in fact, bring him live and  
17 make him available for us to put on in front of this  
18 jury and didn't, is that a fair way to play?

19 A. I didn't tell you anything, okay? Whatever  
20 the lawyers told you, I don't know, sir.

21 Q. Well, if, in fact, that happened, is that  
22 fair?

23 A. I guess you'd have to ask the Judge. I don't  
24 know.

25 Q. Well, you're a lawyer. Is that how you

1 practice law?

2 MR. SAYLES: I'm going to object to that.  
3 It's argumentive.

4 THE COURT: Sustained.

5 Q. (By Mr. Carroll) One thing that I'm -- not one  
6 thing, but another thing I'm curious about, have you  
7 seen one piece of paper during the due diligence that  
8 Mr. Sayles and you talked about that was generated by  
9 any of the three inventors or by anybody at the Israeli  
10 company which said what you're telling the jury in this  
11 courtroom, and that is, that this patent covers Wi-Fi?

12 Have you seen one piece of paper that supports  
13 that?

14 A. From -- a piece of paper from who?

15 Q. From the people who invented the patent.

16 A. Well, I -- I know that they've told me that  
17 themselves.

18 Q. Okay. Can you show us one piece of -- yeah,  
19 and they've got -- and they've got an 18-percent skin in  
20 this lawsuit, don't they?

21 A. Yes, they do.

22 Q. Okay. Do you have a -- were you here in Court  
23 when Mr. Werbner told the jury that they ought to pay  
24 particular attention to the e-mails and letters and  
25 memoranda which were written before a lawsuit got filed?

1                   Were you here when he said that Monday  
2 morning?

3           A.     If he said that, I believe you.

4           Q.     And that makes a lot of sense, doesn't it?

5           A.     Sure.

6           Q.     And when you were a trial lawyer, you used to  
7 tell jurors just like that that same thing, and that is,  
8 take a look at what people are saying before somebody  
9 decided to go to the courthouse. That's pretty smart,  
10 isn't it?

11          A.     I think that they should look at all of the  
12 evidence, absolutely.

13          Q.     And so to that point, here's my question,  
14 Mr. David: Have you, Mr. Jonathan David, owner of the  
15 company that has filed this lawsuit, seen one piece of  
16 paper that you can show to this jury where any of these  
17 inventors or anybody at this little company, before they  
18 failed, said one thing that supports what you're saying  
19 in this courtroom, and that is, our patent covers Wi-Fi?

20          A.     Well, I think that the patent itself talks  
21 about the short-range protocols, which is -- includes  
22 Wi-Fi.

23          Q.     Okay. My question is, again, the words Wi-Fi,  
24 have you seen anything in any piece of paper where your  
25 people or the people who invented this patent and who



1 owned that little company made the same claim that  
2 you're making in this lawsuit?

3 A. Well, like I say, if you're talking about the  
4 inventors, they themselves have told me --

5 Q. I'm not talking about told. I know all about  
6 told.

7 A. A piece of paper?

8 Q. I'm talking about pieces of paper.

9 A. I have not -- I have not reviewed all the  
10 thousands of documents and certainly can't call one up  
11 for you here now.

12 Q. Well, guess what? You're about the -- you're  
13 the next to the last witness that your lawyers are going  
14 to put on.

15 Can you think of one piece of paper that the  
16 jury has seen until yet from your side that other than  
17 the patent -- and I understand your argument, but other  
18 than the patent, can you think of one piece of paper  
19 that your folks have offered into evidence that says  
20 maybe we can't make a Wi-Fi, but our patent covers it?

21 Have you seen anything like that?

22 MR. SAYLES: Excuse me, Your Honor. I'm  
23 going to object to that. What the patent covers is  
24 determined by the words in the claim, and the way he  
25 phrased that question is an improper statement, and I

1 object to it.

2 THE COURT: I'll sustain the objection.

3 The jury will recall my prior instruction  
4 about how to determine whether or not infringement is --  
5 is satisfied by comparing the accused products in the  
6 case to the claims of the patent as have been construed  
7 by the Court.

8 MR. CARROLL: Your Honor, may I ask a  
9 question here?

10 Q. (By Mr. Carroll) Here's what I'm talking  
11 about. And I certainly apologize to my friend,  
12 Mr. Sayles and the Court, because the Judge, in fact,  
13 tells us what you have to know to reach infringement,  
14 and that's -- the jury's going to know that.

15 But here's my question.

16 MR. CARROLL: And let's see, flip  
17 this over -- well, first of all, let's zoom in on the  
18 header up here.

19 Q. (By Mr. Carroll) Do you remember the testimony  
20 this morning as to who Mr. -- is it Dovev? Is that how  
21 you pronounce that?

22 A. That's Dovev (pronouncing).

23 Q. Dovev.

24 A. Yes.

25 Q. Do you remember what the testimony is about

1 who he was?

2 A. I've testified today.

3 Q. Oh, you did.

4 A. But he -- he --

5 Q. Okay. So --

6 A. -- he was the CEO.

7 Q. He used to be the boss at Commil Israel,  
8 correct?

9 A. That's correct.

10 Q. Okay. And then he send -- he's sending  
11 these -- this e-mail to Mr. Soffer, who's testified.  
12 And he was an inventor, correct?

13 A. That's correct.

14 Q. And then he's sending it to Mr. Arazi, who was  
15 the other inventor, and then Mr. Barak, the third  
16 inventor, and some other folks, okay?

17 And then it says -- well, first of all, what's  
18 the date? 2004, it looks like.

19 Now, is that before or after your U.S. patent  
20 that you bought at the foreclosure sell issued?

21 In other words, was your U.S. patent in  
22 existence in 2004 when this e-mail got generated?

23 A. Yes.

24 Q. It was.

25 And it's not an Israeli patent we're talking

1 about. It's a United States patent, the very same one  
2 you're suing on in this courtroom, correct?

3 A. Correct.

4 Q. Okay. And then let's --

5 MR. CARROLL: Let's flip over to -- well,  
6 let's see. Scroll on down a little bit. I'm getting my  
7 deals confused here.

8 Okay. Okay. Here we go. Find the one  
9 that says turned down. That's -- Tracy, do you know  
10 what I'm talking about? I'm sorry about this.

11 MR. WERNER: Cisco turned down?

12 MR. CARROLL: Yeah. Is that on? There  
13 we go. Okay.

14 Q. (By Mr. Carroll) All right. Now, let's --  
15 let's you and I look at this with the jury.

16 It says: Turned down, Cisco. The Corporate  
17 Business Development and Acquisitions Group do not want  
18 to pursue an opportunity with Commil any further. Their  
19 reasons are somewhat vague, but the main thrust of their  
20 rationale appears to be they have zero interest in  
21 Bluetooth and do not have -- do not appear to have  
22 confidence in Commil's ability to develop a Wi-Fi  
23 mobility management system.

24 As they had no basis for coming to such a  
25 conclusion, in other words, they had not discussed

1 Commil's Wi-Fi capability in any detail, EM will discuss  
2 their reasons with them in more depth.

3           Next Step: Get detailed feedback from Cisco  
4 executives as to their reasons for not continuing the  
5 discussions.

6           Now, nowhere in there do the folks at Commil,  
7 who at that time owned what is now your patent, say what  
8 you're saying to this jury, and that is, they've got to  
9 do business with us because we have the patent rights  
10 over there.

11           They don't say that, do they?

12           MR. SAYLES: Excuse me, Your Honor. I'm  
13 going to object to that. That's argumentative. The  
14 document doesn't deal with the patent.

15           THE COURT: I'll sustain the objection.  
16 We're going to -- we'll take our lunch recess at this  
17 time, Ladies and Gentlemen.

18           Remember my prior instructions. Don't  
19 talk about the case. I'm going to break you for a  
20 little bit longer at this time. I've got a proceeding  
21 or two over the lunch hour I need to attend to.

22           Take until 1:30 today. Have a nice  
23 lunch. Don't talk about the case.

24           LAW CLERK: All rise.

25           (Jury out.)

1 THE COURT: Y'all have a seat.

2 Mr. Carroll, what relevancy does the type  
3 of meat the gentlemen ate at Bodacious bring to this  
4 case?

5 MR. CARROLL: None, Your Honor. I  
6 apologize to the Court for that.

7 THE COURT: All right. Thank you.

8 Well, we're in recess.

9 LAW CLERK: All rise.

10 (Recess.)

11 (Jury out.)

12 LAW CLERK: All rise.

13 THE COURT: Please be seated.

14 All right. We've got a hearing outside  
15 the presence of the jury for purposes of assessing the  
16 comparability of certain license agreement summaries.

17 Mr. Strachan, do you want to call your  
18 witness?

19 MR. STRACHAN: Thank you, Your Honor.  
20 May it please the Court.

21 Roger Carlile. He's has not been sworn,  
22 Your Honor.

23 THE COURT: All right. Mr. Carlile,  
24 please come take the oath, please.

25 (Witness sworn.)

1 THE COURT: Come around, sir.

2 MR. STRACHAN: Your Honor, let me return  
3 Mr. Carroll's notes to him.

4 THE COURT: All right. That will be  
5 fine.

6 MR. CARROLL: Thank you.

7 MR. STRACHAN: May it please the Court.

8 THE COURT: Mr. Strachan.

9 MR. STRACHAN: Your Honor, we come  
10 outside the presence of the jury, as you've noted, for  
11 the purposes of laying down on the record the predicate  
12 for the selection of the comparables pursuant to the  
13 requirements of ResQNet.

14 Prior to this hearing, I proffered to the  
15 Court a list of exhibits which we will be discussing  
16 with the witness. That notebook concluded at  
17 Plaintiff's Exhibit 5, which is the description of the  
18 license of the comparables.

19 Your Honor, if I may approach, I have  
20 another copy, which is unredacted, and it's probably the  
21 one you want for the hearing.

22 THE COURT: All right.

23 MR. STRACHAN: Your Honor, also our  
24 technician can pull that up on the screen so that -- if  
25 we need to do that as well.

1 THE COURT: Hold on just a second.

2 MR. STRACHAN: Yes, sir.

3 (Pause in proceedings.)

4 THE COURT: All right. Proceed.

5 ROGER CARLILE, PLAINTIFF'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. STRACHAN:

8 Q. Would you state your full name, please, sir?

9 A. Roger Carlisle.

10 Q. And, Mr. Carlile, you are the Plaintiff's  
11 damage expert in this case, are you not?

12 A. Yes.

13 Q. And you understand that we're here today at  
14 this hearing to discuss the establishment of the linkage  
15 between the comparable royalty rates you used and the  
16 technology of the patents-in-suit.

17 A. Yes.

18 Q. You're familiar with the requirements of  
19 ResQNet case?

20 A. Yes.

21 Q. All right. And did you apply those  
22 requirements in selecting the comparable rates to use?

23 A. Yes.

24 Q. All right. Would you please describe for the  
25 Court your process in selecting the rates?



1           A.     Well, I begin any search like this, you know,  
2 by researching a variety of things, such as articles  
3 and -- and, you know, license agreements and those kinds  
4 of things.

5                     I used Royalty Source, which is a commonly  
6 used resource for this by analysts such as myself. In  
7 fact, the other expert, Mr. Becker, testified that he  
8 also uses that data source as well.

9           Q.     Okay. And let me -- to move along, how did  
10 you direct your search in Royalty Source to make sure  
11 that you were ascertaining royalty rates which were  
12 comparable to the technology in this case?

13          A.     I used a set of search terms, and I took those  
14 search terms after reading the '395 patent and looking  
15 at the accused products.

16          Q.     Okay. And what were the search terms you  
17 used?

18          A.     Things such as -- or the ones actually -- they  
19 were wireless private branch exchange, wireless access  
20 points, wireless access controller, wireless local area  
21 network, and wireless.

22          Q.     And you selected the use of those search terms  
23 from the patent itself?

24          A.     Yes.

25          Q.     All right. And using those search terms, what

1 results were returned to you?

2 A. I got back excerpts or summaries of 63 license  
3 agreements or transactions that I was allowed to look  
4 at.

5 Q. Okay. And then what did you do with that list  
6 of 63?

7 A. Well, I reviewed them. They're summaries of  
8 the technology. They don't contain any rates, for  
9 example. So you can't -- there's no bias in the  
10 selection. I can't look at that and say, well, toss  
11 this one in, because it's one rate versus another rate.  
12 It's summaries of the technology.

13 I did two things with that. One, I, on my  
14 own, took the 63 and -- and took it down to eight that I  
15 thought were the most comparable based on the  
16 descriptions of the technology.

17 Q. And I want to make sure. Your selection of  
18 the eight was based upon the similarities between the  
19 technology described in the 63 and the technology in the  
20 license?

21 A. Right.

22 Q. Okay. And I'm sorry to interrupt you. Go  
23 ahead.

24 A. That's fine. It just -- I did another thing,  
25 because while I have some experience in the area of

1 telecommunications and wireless, I'm clearly not a  
2 technical expert.

3           So I also communicated with Mr. McAlexander's  
4 office and Mr. McAlexander and asked him to help me  
5 analyze that as well.

6           Q.    Okay. And did you come up then with -- I  
7 think you said eight?

8           A.    Right. In my analysis, I came up with eight  
9 that -- that I thought were most comparable, and I  
10 submitted those to Mr. McAlexander's office to  
11 corroborate that.

12           I also gave the full 63 and an independent  
13 test to Mr. McAlexander and asked him to select so that  
14 I could compare his independent work against my work as  
15 well.

16           Q.    And did you give Mr. McAlexander instructions  
17 that in his selection, he was to find the technology  
18 which was closest to the technology of the  
19 patents-in-suit?

20           A.    In that second independent test, yes, I asked  
21 him to look through the 63 and tell me which of those he  
22 thought would -- were the most comparable to the '395  
23 patent.

24           Q.    And how did the list he selected, based on  
25 matching technology, compare to the list that you

1 yourself selected?

2 A. Of -- of the eight that I selected, he --  
3 seven of those selections, he also selected.

4 Q. Okay.

5 A. I selected one that he didn't select, and he  
6 selected one that I didn't select.

7 Q. All right. Now, Your Honor has as Exhibit No.  
8 5 --

9 MR. STRACHAN: If we could put that up,  
10 please, sir.

11 Q. (By Mr. Strachan) -- that is the list of  
12 actually the eight; is that correct?

13 A. This is the -- the eight that I selected --

14 Q. Okay.

15 A. -- and then submitted to his office with  
16 Dr. Duane Laurent and asked him to also, working with  
17 Mr. McAlexander, tell me if he thought these were the  
18 appropriate selections.

19 Q. Okay. And the very first one in Exhibit  
20 No. 5, I think, is the one that you, with  
21 Mr. McAlexander, decided that was not close enough; is  
22 that right?

23 A. Right. This is one that they recommended not  
24 be used in my analysis, because it wasn't sufficiently  
25 comparable.

1           Q.    Okay.  So my point is that you culled, even  
2 from the eight, the ones that you and the expert did not  
3 most see as -- the technical expert most see as  
4 comparable technology, correct?

5           A.    That's correct.

6           Q.    All right.  Now, let's turn to the next  
7 page -- or actually, it will be Page 3 of that exhibit  
8 and tell us about this -- this licensing agreement that  
9 you used.

10          A.    Okay.  This is a license -- or an agreement  
11 between the government of Israel and this particular  
12 company.  I'll have to find their name here.  Metalink,  
13 Limited.  Deals with, as you can see there in the  
14 licensed property, wireless local area network chipsets.

15          Q.    Now, I guess we should start with, in your  
16 search for this case, did you find any perfectly  
17 comparable royalty rates or royalty situation?

18          A.    Well, we don't have -- under Factor 1,  
19 Georgia-Pacific Factor 1, we don't have a license of  
20 this particular patent, and there were no licenses that  
21 I saw that were produced by Cisco under Factor 2 for  
22 what they consider to be comparable technology.

23                So we got to this analysis.  And it is rare,  
24 you know, at that level to ever have a license that is  
25 perfectly comparable.

1           Q.     Okay.  Now, you understand that earlier in the  
2 litigation, there was a settlement against one Defendant  
3 and then earlier this week was a settlement against  
4 another Defendant.

5                     You're aware of that?

6           A.     Yes.

7           Q.     And did you -- did you feel like the  
8 settlement agreements were -- were valid comparables to  
9 use in coming up with a royalty rate?

10          A.     No, I did not.

11          Q.     And why is that?

12          A.     Well, settlements -- for one, I don't have  
13 information -- or much information on the one that  
14 occurred, I think, just at the beginning of this trial.

15                     Secondly, you seldom have all the information,  
16 and the -- and the factors surrounding the settlement  
17 often don't align with the requirements of a  
18 hypothetical negotiation.

19          Q.     Okay.  So without valid license -- without  
20 reliable licenses of the patents-in-suit to base it on,  
21 and with no Cisco licenses to rely on, did you then go  
22 to this process of going through the comparable  
23 technology you described for us a while ago?

24          A.     Yes.

25          Q.     Okay.  Now, turning then to this Metalink,

1 Limited, to the government of Israel, this is one that  
2 you considered; is that right?

3 A. Yes.

4 Q. And you noted that this is not exactly like  
5 the technology in suit nor is it exactly like a patent  
6 license; is that correct?

7 A. That's correct.

8 Q. All right. Would you describe for us,  
9 nonetheless, why you believe that this was reliable and  
10 why -- what the link is between the technology of this  
11 license and the patent-in-suit?

12 A. Well, it deals with, you know, wireless  
13 technology in a -- in a wireless network and the  
14 products in that network.

15 Q. And the royalty rate in this agreement was  
16 described as 4 to 4-1/2 percent; is that correct?

17 A. Yes.

18 THE COURT: And what was licensed?

19 THE WITNESS: This particular screen is  
20 very small to read.

21 MR. STRACHAN: Your Honor, may I give  
22 him a --

23 THE COURT: Yes.

24 THE WITNESS: I've got my own, actually.

25 MR. STRACHAN: Okay.

1                   THE WITNESS: I'll read these, if you  
2 don't mind. I just wanted to be clear.

3                   I mean, the license here is for the  
4 technology that's used in the -- in the development of  
5 the wireless chipsets, the access chipsets.

6                   THE COURT: When you say technology, what  
7 do you mean?

8                   THE WITNESS: Well, my understanding is,  
9 it's the -- it's the -- it's the wireless technology in  
10 the chipsets. They're developing wireless chipsets.

11                  THE COURT: Well, did the government of  
12 Israel own a patent?

13                  THE WITNESS: No. I don't believe this  
14 is -- this is a patent. I think this is -- they  
15 invested money into the development of the chipset  
16 technology, and there were royalties paid for that.

17                  THE COURT: Okay. All right.

18                  Q. (By Mr. Strachan) Now, there are some  
19 differences between that agreement and a patent of  
20 this -- the patent-in-suit or license of this  
21 patent-in-suit.

22                  Do you understand that?

23                  A. Yes.

24                  Q. And you've taken that -- those differences  
25 into account in deciding what would be an appropriate



1 royalty rate for this hypothetical negotiation in this  
2 case?

3 A. Yes.

4 Q. Okay. Let's turn to the next one, which is  
5 Page 4 of the exhibit, the Siemens -- or Siemens  
6 (pronouncing) license.

7 THE COURT: Excuse me just a second,  
8 Mr. Strachan.

9 MR. STRACHAN: Yes, Your Honor.

10 THE COURT: How did you take that into  
11 account?

12 THE WITNESS: Well, I -- I mean, what I  
13 try to do is to consider that -- in all of these  
14 agreements that there are certain differences, in terms  
15 of the technology, the scope, and all of that. I mean,  
16 you have -- it's -- there's not a formula answer to that  
17 process.

18 I try to consider all of the -- all of  
19 the differences and how those differences work into the  
20 various rates. I look at the range of the rates across  
21 all the agreements to develop if there's a -- you know,  
22 so if I saw a rate, for example, that was way outside  
23 the range and that was driven by some particular  
24 difference, then I would likely exclude that.

25 Q. (By Mr. Strachan) Let's then turn to the next

1 one on Page 4, which is the same Siemens or Siemens  
2 (pronouncing) license for InterDigital.

3           Would you describe what the technology or what  
4 this license was?

5           A.    Okay.  This is between InterDigital and  
6 Siemens.  As you can see there in the licensed property,  
7 it talks about it's TDMA and CDMA, which are two  
8 wireless, you know, cellular protocols.  It deals with  
9 the knowhow associated with the B-CDMA chip, the ASICs  
10 chip.

11          Q.    All right.  And the royalty rate in that was 5  
12 percent as well?

13          A.    Correct.

14          Q.    All right.  Did you note that there were some  
15 differences between this and a -- a patent license of  
16 the '395 patent?

17          A.    Yes.

18          Q.    And what would the differences be?

19          A.    Well, again, we're at the chip level and not  
20 the architecture level, but I considered that in the --  
21 the chip-level royalties, and -- and they typically run  
22 lower than architectural -- excuse me -- architectural  
23 level.

24                So I considered that -- that, you know, if  
25 this were at the architecture level, it would likely

1 have been an even higher rate.

2 Q. And did you take that into consideration in  
3 coming up with your opinion?

4 A. Yes.

5 Q. Let's then turn to the next one, which is Page  
6 5, the Repeater Technologies license. Would you  
7 describe the technology in this case, please -- or this  
8 license, please?

9 A. Okay. Again, if you -- if you read the  
10 licensed property section there, it talks about the  
11 technology, you know, being -- for their heading, the  
12 wireless system technology and products.

13 And it's used to reduce -- it discusses it's a  
14 technology used in wireless systems to reduce the number  
15 of base stations used in that system. It's a -- and  
16 it's, you know, described as diversity technology.

17 Q. And this was a patent license?

18 A. It is a -- it's a license -- yes. It's a  
19 license agreement, which includes patent rights.

20 Q. And the royalty under this was 3 percent -- or  
21 the greater of 3 percent or \$75 per unit; is that right?

22 A. Yeah. It had a 50,000 upfront fee, and then  
23 it had a 3-percent running.

24 Q. And I think there was also some granting of  
25 some common stock to the owner of the -- of the patent?

1           A.     Yes.

2           Q.     Okay.  Now, as with the other two -- I maybe  
3 not have asked you, but did you discuss this particular  
4 license with Mr. McAlexander to confirm the link between  
5 the technology of this license and the technology in  
6 suit?

7           A.     Yes.  I discussed each of these with him.

8           Q.     Okay.

9           A.     Each of these seven.

10          Q.     Okay.  And did he confirm for you that the  
11 technology described in this license, the Repeater  
12 Technologies, was comparable to the technologies of this  
13 lawsuit?

14          A.     Yes.  What he confirmed for me was -- is that  
15 each of these were in what he considered the same  
16 technology product family.  None of them are -- are  
17 perfect comparables, but they're all in the -- what he  
18 considered to be the same family, which was a reasonable  
19 comparison.

20          Q.     All right.  Let's go to the next one then,  
21 which is on Page 6, the Zingerang license.  What is the  
22 technology in this license?

23          A.     Okay.  Again, if you come down into the  
24 licensed property, it's -- the license states -- about a  
25 third of the way down:  Licensed technology means

1 proprietary information, software, object code, source  
2 code, knowhow, processes, methods, formulas, and carries  
3 on -- that comprise or relate to the roaming messenger  
4 technology.

5 Q. And the royalty rate in this was 5 percent  
6 with an upfront fee of \$100,000?

7 A. Correct.

8 Q. And with the others -- did you discuss this  
9 particular license with Mr. McAlexander and ascertain  
10 that the technology of this license was comparable to  
11 the tech -- or I guess comparable to the technology  
12 involved in this case?

13 A. Yes.

14 Q. Let's then -- turn then to the next one, which  
15 is on Page 8, I believe, the Redox Technology license.

16 What is the technology involved in this  
17 case -- or this license, rather?

18 A. Okay. All right. In the second sentence, it  
19 defines there the term subject technology, which  
20 includes pending U.S. patent applications, continues on,  
21 talks about the communi -- communications convergent  
22 thin client device allowing users to surf, you know, the  
23 web, e-mail, movies, MP3, internet, those types of  
24 things.

25 And you'll see in the last sentence, it

1 references wireless fidelity or Wi-Fi and cellular  
2 networks.

3 Q. And the royalty rate in this license was 2-1/2  
4 percent with an upfront fee of 25,000?

5 A. Yes.

6 Q. Did you likewise affirm -- discuss and affirm  
7 with Mr. McAlexander the comparability of this  
8 technology to the patents-in-suit?

9 A. Yes.

10 Q. The next one, Page 9, is the Sky Way license  
11 that, actually, I think I recognize. This involves the  
12 ability to make a Wi-Fi connection while in the air, in  
13 an airplane; is that right?

14 A. Yes.

15 Q. Okay. And what is the -- well, I'll let --  
16 this should -- you describe it for the Court what the  
17 technology is.

18 A. Okay. Well, as it says, it's a license  
19 agreement, includes patent-pending technology, deals  
20 with broadband wireless networks and infrastructures for  
21 airborne customers.

22 Q. Okay. Now, this was, apparently, an exchange  
23 or agreement between two commonly owned entities. Did  
24 you consider that when you were selecting this as a  
25 comparable?

1           A.     Yes.

2           Q.     Okay.  And the license -- the rate in this  
3 agreement was 5 percent; is that correct?

4           A.     Yes.

5           Q.     Okay.  If we turn to, I believe, the last one  
6 on Page 10, it's the Hyundai license.

7                    Could you tell us about the technology in this  
8 license?

9           A.     Again, if you -- about, you know, almost  
10 halfway down the license property section, you see the  
11 existing technology acquired were a base transceiver  
12 station and a base station controller product lines.

13          Q.     And did you discuss this with Mr. McAlexander?

14          A.     Yes.

15          Q.     And reached the same conclusions regarding the  
16 comparability of this technology to the patent-in-suit?

17          A.     Yes.

18          Q.     And the rate in this one is 1 percent, I  
19 believe?

20          A.     Yes.

21          Q.     And you understand that ResQNet teaches  
22 against just the global use of surveys without looking  
23 at individual agreements.  You understand that?

24          A.     Yes, I do.

25          Q.     But, nonetheless, did you use a survey not to

1 form an opinion but as a backstop or a checkpoint to  
2 make sure that none of these were outside the general  
3 area of this technology?

4 A. Yes. I did look at two surveys that I could  
5 locate that I used as a reasonableness check on this  
6 work.

7 Q. And can you tell us what those were?

8 A. Yes. One was the Licensing Economics Review,  
9 and it -- it looked at -- it starts out looking at a  
10 large number of licenses, something like 1500. I think  
11 they worked down -- in this case, I looked at licenses  
12 for telecommunications and the averages for that. And I  
13 think they looked at 65 telecommunications licenses.

14 Q. And were any of the licenses reflected in  
15 Exhibit No. 5 outside the range of the survey that you  
16 looked at?

17 A. No. The average of that survey for  
18 telecommunications licensing was 5.3 percent, I believe.

19 Q. And the conclusion you're proffering in this  
20 case is a licensing rate of 5 percent, is it not?

21 A. Correct.

22 Q. And, in fact, you've read -- Mr. Becker's, who  
23 is the Defense expert in this case, you've read his  
24 deposition, have you not?

25 A. Yes.



1 Q. And he used the same processes and same  
2 sources as you have, correct?

3 A. Yes.

4 Q. Okay. And the differences is just which  
5 comparables you two have selected?

6 A. Yeah. That would be the primary difference.  
7 There's also a computational thing he does to divide by  
8 10 that's different.

9 MR. STRACHAN: Your Honor, that is our  
10 proffer of --

11 THE COURT: Okay.

12 MR. STRACHAN: I can address by  
13 discussion, but that's my questions.

14 THE COURT: All right. I'm going to  
15 let -- Mr. Carroll, do you have any questions?

16 MR. CARROLL: Your Honor, I'm not sure  
17 exactly how to do this, other than to just maybe ask him  
18 a couple -- if -- if the Court please, about these  
19 specific licenses.

20 CROSS-EXAMINATION

21 BY MR. CARROLL:

22 Q. Mr. Carlile, have you seen the objection to  
23 your use -- I mean, have you read the legal paper, the  
24 objection to the comparability of these licenses that  
25 was filed with Judge Everingham?

1           A.    No.  I was told about it, but I hadn't read  
2 it.

3           Q.    Well, that's not your fault.

4                    Let me ask you just a couple of basic  
5 questions, and I'm going to give you a for instance.  
6 On the -- on the -- on the Sky Way Global and Sky Way  
7 Aircraft license, can you locate that one?

8           A.    Yes.

9           Q.    That states on its face that it's a  
10 related-party transaction, doesn't it?

11          A.    Yes.

12          Q.    And you've testified on deposition that  
13 because of that, it doesn't meet the Georgia-Pacific  
14 definition of a willing buyer and a willing seller,  
15 correct?

16          A.    I'm sorry.  Say that again.

17          Q.    Yeah.  On your deposition, the question was,  
18 what is the significance of a related-party transaction,  
19 and you testified -- and this is -- and I don't have --  
20 I'm sorry, I don't have the deposition to give you.

21                   If the Court please, I can walk up here and  
22 you can read with me, if you don't --

23          A.    It's fine with me.

24                   MR. CARROLL:  Would that be alright?

25                   THE COURT:  That's alright.

1           Q.     (By Mr. Carroll) And this is just a synopsis  
2 of your deposition.

3                     And the question is: What is the significance  
4 of this being a related-party transaction, and your  
5 answer is, it doesn't meet the definition of a willing  
6 licensor and a willing licensee on its face. Whether  
7 that ultimately had an impact or not, you can't tell  
8 from the information available.

9                     That's what you testified to, right?

10          A.     I'll trust that you pulled that properly, yes.

11          Q.     Well, I didn't but I'm assuming --

12          A.     I trust that somebody did.

13          Q.     All right. And my question is, your  
14 admission, the way I read it is, is that you haven't  
15 done enough research to determine whether this is a  
16 reliable license because of that related-party  
17 situation?

18          A.     Well, I think what I was saying is, is that I  
19 don't know whether that has an impact or not. You can  
20 have related-party transactions that are done at what  
21 would be considered fair market value which comes out of  
22 a willing licensor or a willing licensee-type  
23 transaction, because they're done for tax purposes or  
24 other reasons.

25                     So I don't know whether it had an impact or

1 not. But I think if we had the line of questioning  
2 there, what they were going at was trying to decide  
3 whether the fact that it was a related-party transaction  
4 simply disqualified, which I believe I said it did not.

5 Q. But the fact of the matter is that you can't  
6 tell the Judge here today whether that did or did not  
7 have an impact on the willing buyer and seller  
8 requirement under Georgia-Pacific, because you just  
9 didn't have the data?

10 A. Yeah. I wasn't in that room with that  
11 negotiation, so I don't know if that had an impact  
12 ultimately or not.

13 Q. Okay. And the other questions I have in --  
14 and, Mr. Carlisle, I'm going to ask them to you just  
15 kind of generally, and we certainly can refer to the  
16 specifics of the various licenses.

17 But, for instance, the very first one you  
18 spoke to is a research grant; isn't that true? And  
19 that's the -- let's see -- let's see --

20 THE COURT: Metalink.

21 Q. (By Mr. Carroll) The Metalink.

22 A. Right.

23 Q. That's not even a license of an existing  
24 patent, is it?

25 It's a grant of money saying if -- here's

1 money and if you develop something, we get a certain  
2 royalty?

3 A. That's correct.

4 Q. And you believe that's comparable to a patent  
5 licensing situation that the hypothetical negotiation  
6 contemplates?

7 A. I think that the concept of the royalty and  
8 the value attached to the product is -- is instructive  
9 for that purpose, yes.

10 Q. But you agree that it's different from a  
11 patent license?

12 A. It's a -- it has a difference, yes.

13 Q. Okay. And -- and -- but the purpose of the  
14 money was research and development, and there was never  
15 even any commitment that a product or a license would --  
16 would issue, correct?

17 A. Well, no, there was a commitment. I mean,  
18 this agreement had a commitment to pay royalties for the  
19 products that were developed that came out of that  
20 research grant.

21 Q. Okay. Now, let me just ask you generally,  
22 would you agree with me that the -- that common to all  
23 of the transactions that you sponsored as comparables is  
24 the fact that you were unable or didn't look at any of  
25 the underlying data, other than the summaries that you

1 got out of the search company?

2 A. Right. Yeah. That's -- that's one aspect of  
3 using Royalty Source is, is you get the summaries of  
4 these things. You don't have the actual agreements. In  
5 fact, Royalty Source often doesn't have the actual  
6 agreements, because most companies don't, you know,  
7 disclose the actual agreements.

8 Q. And so what you're restricted to is what they  
9 tell you about them, and they tell you sometimes they're  
10 either worldwide or U.S.-wide. They tell you whether  
11 they're exclusive or non-exclusive. They tell you  
12 whether they include one piece of property or it's a  
13 suite of property being transferred. They tell you all  
14 those kinds of things, do they not?

15 A. They provide you all the terms that they have  
16 regarding the license.

17 Q. All right. And from the -- and you understand  
18 the purpose of the hearing today is -- is whether that  
19 information is reliable, and the only way I know to ask  
20 this question is, how do you make adjustments for things  
21 like -- well, some of these licenses that you sponsored  
22 were worldwide, correct, rather than nationwide?

23 A. There were at least in one case, yes.

24 Q. And some of them were exclusive rather than  
25 non-exclusive, correct?

1           A.     Correct.

2           Q.     And some of them granted additional property  
3 rights, correct?

4           A.     Correct.

5           Q.     So how did you make those adjustments in order  
6 to satisfy the reliability test?

7           A.     Well, again, I'm starting with a range, so  
8 what we're looking here is for a starting point of the  
9 range. So as long as those adjustments fall in the  
10 range.

11                   For example, if I have something, it's a  
12 4.5-percent rate, and I think that that adjustment would  
13 tend to push the rate down to 4, that's not a problem  
14 for me, because I'm starting with a range that says 1 to  
15 5, and I'm using the other Georgia-Pacific Factors to  
16 use along that range to pick what I think is the proper  
17 answer.

18                   So you don't -- as you've mentioned, I think  
19 we've talked about, you know, there's never a perfect  
20 comparable. It's the same thing as appraising real  
21 estate. I may have a house that's got three bathrooms  
22 here and two bathrooms there, one that has, you know, a  
23 two-car garage, a three-car garage.

24                   What I'm looking for is to take all of that  
25 data and give it a range given the appropriate starting

1 point. So I only have a concern if they fall out above  
2 the high end of the range or below the low end of the  
3 range.

4 Q. So -- so you picked this range and then  
5 independent of the comparables, the range defines  
6 reliability, in your opinion?

7 A. Well, I'm not sure if I follow that question.

8 Q. In other words, you pick a range, and then the  
9 range itself drives your answer that a particular  
10 adjustment is reliable so long as it's within that  
11 range?

12 A. I think the answer to that is yes. I use this  
13 data to develop what I think is the proper range for a  
14 reasonable royalty based on what I understand, after  
15 talking to the technical expert, is comparable product  
16 or technology families.

17 And then I begin the analysis of the  
18 Georgia-Pacific Factors to move to the point that I  
19 think represents the reasonable royalty within that  
20 range.

21 Q. Okay. And last question, and this is just  
22 because I really don't understand how you did it, and  
23 that's my problem.

24 But when you have, for instance -- and  
25 Mr. Jones just handed me a note. You know, there are --



1 there are transfers of technology or technologies that  
2 are described in some of these agreements that you use,  
3 correct?

4 A. I'm sorry. Say that again.

5 Q. Isn't it true that some of the agreements --  
6 and we can certainly pinpoint the ones in question --  
7 involve something that the survey source term transfers  
8 of technology?

9 A. I'll take your word for it. I mean, I think  
10 they mentioned it in a variety of ways: License,  
11 transfer, otherwise, yes.

12 Q. Okay. And -- and your testimony to Judge  
13 Everingham is that that is for the purpose of  
14 reliability comparable to a patent license?

15 A. Yes, I --

16 Q. The sale of technology?

17 A. Yes. I wouldn't have included these seven  
18 that I ultimately selected, if I didn't think they  
19 represented comparable technology that was reliable for  
20 the use of setting a reasonable royalty range.

21 Q. Okay. Did you or have Mr. McAlexander  
22 research any of the underlying technology at a -- at a  
23 patent -- at a patent level that might be applicable to  
24 these agreements?

25 A. I can't say what Mr. McAlexander did. I did

1 not have the patents that -- at the patent level for  
2 these agreements.

3 Q. And, again, does your report speak to how you  
4 made the adjustments, for instance, to deal with  
5 related-party transaction possibilities with technology  
6 transfers, for instance, with grants, research grants?  
7 Because I didn't see that in your report.

8 A. Well, what it does is this report describes  
9 each of these licenses. It calls out several of the  
10 features that you mentioned. As I said, it works to the  
11 end and concludes that there's a reasonable range of  
12 royalties from which I can start my analysis.

13 Q. And this is the last question I have, and that  
14 is, on the one where it is, on its face, a related-party  
15 transaction -- I can't remember the name of it; you and  
16 I just talked about it.

17 A. I think that was the Sky High (sic).

18 Q. Right. The airplane deal.

19 A. Right. Sky Way. Sorry.

20 Q. Okay. And you and I just, I think,  
21 established that you do not know from one way or the  
22 other from the information you had whether the  
23 related-party nature of that transaction took it out of  
24 the willing buyer and seller context.

25 A. I don't know whether that element of it had an

1 ultimate impact. The rate falls in the range of  
2 non-related party transactions, so I concluded from that  
3 that it falls in the reasonable range.

4 Q. As a matter of fact, it's the same rate you  
5 picked as the rate you want to sponsor to this jury, and  
6 that's 5 percent, correct?

7 A. It is the same rate. It wasn't for that  
8 purpose.

9 Q. Okay.

10 MR. CARROLL: That's all I have. Thank  
11 you, Your Honor.

12 THE COURT: All right. Just a second.

13 MR. STRACHAN: Yes, sir.

14 THE COURT: Tell me this: The Siemens  
15 license from Interdigital, I believe that's on the  
16 second page.

17 THE WITNESS: Yes.

18 THE COURT: That deals with TDMA and  
19 CDMA, correct?

20 THE WITNESS: Yes.

21 THE COURT: Those are cellular telephone  
22 technologies?

23 THE WITNESS: Right.

24 THE COURT: And tell me how that  
25 technology is comparable to the technology that's at

1 issue in this case.

2 THE WITNESS: Well, actually, the -- from  
3 my perspective, the wireless -- cellular wireless  
4 technologies are very similar to Wi-Fi, Bluetooth, and  
5 other kinds of technologies.

6 There's been a debate in the Court about  
7 long-range and short-range, but all of the issues in  
8 terms of signal blockage, handoff between, you know,  
9 what's called cell towers in the cellular business  
10 versus what's called, you know, base station or access  
11 points and Wi-Fi or Bluetooth and others are many of the  
12 same issues. They're dealing with the same sorts of  
13 problems and how to solve those.

14 THE COURT: Well, was -- what was license  
15 property, did that include patents?

16 THE WITNESS: Well, it's described as  
17 know-how associated with the -- the chip.

18 THE COURT: Okay. All right. Thank you.

19 Mr. Strachan, do you have anything  
20 further?

21 MR. STRACHAN: No questions, Your Honor.

22 THE COURT: All right. All right. I'm  
23 going to permit the expert to rely on the Repeater  
24 Technologies summary, Zingerang, Redox, and Hyundai.

25 I'm excluding Metalink, Siemens, and the

1 Sky Way summaries.

2 Anything further we need to take up at  
3 this time, Mr. Strachan?

4 MR. STRACHAN: No, Your Honor. We'll  
5 revise our slides accordingly.

6 THE COURT: Thank you.

7 We're coming back at 1:30, but if you  
8 need a few more minutes, let me know.

9 MR. STRACHAN: Thank you, Your Honor.

10 THE COURT: Anything further from the  
11 Defendant?

12 MR. CARROLL: No, Your Honor.

13 LAW CLERK: All rise.

14 (Lunch recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
SHELLY HOLMES, CSR  
Deputy Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/10

\_\_\_\_\_  
Date